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The ownership and sovereignty of the states over oil and gas resources: a comparative study

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Abstract

History of oil contract and national movements has always been associated with the fact that the ownership of oil and gas resources should remain under the control of host government, and oil companies, that are representative of Capital-exporting countries, could own oil and gas resources only when they are waiting for implementation of an obligation from the host government based on their contractual obligations. These concerns have led to some restrictions on ownership of foreign oil companies over oil and gas resources, particularly in the Middle East region (Lo, 2003, p30). Sovereignty of state over these resources is equal to prevention of exploitation of other countries from these resources while giving the owner of resources an exclusive right. In this paper, having presented a survey of Iran's regulations, international law, Arbitration awards and Opinions of religious jurists, we will see that all of the above mentioned sources agree on the host government's ownership over these resources; moreover, the right to compensation is also recognized for foreign companies.

Keywords: international arbitration awards, ownership, resources, sovereignty.

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Risk management in regulation of International oil contracts based on TEFCEL

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Abstract

Contract life cycle in the TEFCEL management is divided into planning, formation, performance, monitoring and closing out. TEFCEL management of the contract requires the contract to be comprehensively considered. In the contract life cycle, all contractual risks should be identified and appropriate approaches to them should be found. Identification, classification and management of contractual risks in the formation step cannot be easily achieved, but they should be done as far as possible, so that other stages of the contract life cycle may not be influenced. For this purpose, this article aims to address a legal analysis of risks as well as their identification and classification, and provide appropriate approaches for their management in the formation stage.

Keywords: assessment, contract life cycle, identification, management, risk, TEFCEL.

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Legal aspects of taxation of petroleum and natural gas

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Abstract

Governments as owners of minerals or guardians of national interests have many financial instruments (fiscal and non-fiscal) to obtain the economic rent expected of the exploitation of oil and natural gas resources. As far as the fiscal means is concerned, mineral section and, in the context of the current study, petroleum and natural gas create the special tax bases of different rates leading to the formation of a fiscal system special to this section in some countries. Development of methods of taxation on oil enable some countries to get a huge share of the rent through taxation of operations run by private sector (domestic and international petroleum companies) with no direct governmental investment or risks. In Iran, because of the exclusive dominion and ownership of minerals by the government, the National Petroleum Company, as operator of petroleum operations, has a special fiscal arrangement with the state. In this article, we compare the Iranian petroleum fiscal regime with that of the other countries.

Keywords. direct tax, indirect tax, petroleum and natural gas, royalty, tax of revenue of legal persons.

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An analysis of the applicable principles in studying indirect expropriation in the El Paso arbitration award

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Abstract

Indirect expropriation has been studied in numerous arbitration awards regarding foreign investor's claims against host states. By studying these claims, especially claims which have been awarded recently, one can extract two principles. The first principle is that some general regulations can lead to indirect expropriation; i.e., as a general principle, general regulations do not lead to indirect expropriation except if they are enacted in an unreasonable manner. The second principle, which is applied by the tribunals, is that the necessary requirement for expropriation is neutralization of use of investment; that is, at least one of the essential components of the property rights must have disappeared and a mere loss in value of the investment, no matter how important, is not an indirect expropriation. The mentioned principles, which are indeed an explanation of the requirements for indirect expropriation, are an innovation in their kind in studying the indirect expropriation claims. The current study aims to examine the above principles.

Keywords: general regulations, indirect expropriation, investment, ownership.

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Acquisition and reclamation of wasteland with rule of capture in common law of the United States: a comparative study

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Abstract

Means of possession are specified in different legal systems; such means are considered very similar to each other in a holistic perspective. One of the means of possession, as referred to in the legal system of Iran in the first paragraph of Article 140 of the Civil Code, is acquisition of unclaimed property and reclamation of wasteland which, in comparison with Common law of the United States of America, is very similar to the rule of capture. In this study, the rule of capture in the common-law and acquisition in the Iranian legal system has been discussed; similarities and differences between these two terms have been examined and, at the end, it has been concluded that these two terms, despite their many similarities, do not coincide exactly with each other and are significantly different. The research method used is descriptive-analytical and the data were collected through scientific-library method.

Keywords: ownership, property, public property, rule of capture acquisition of unclaimed property, wasteland reclamation.

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Ananalysis of the environmental approach in oil contracts

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Abstract

The purpose of this article is to study how oil contracts deal with the issue of the environment. In this context, with a view to the history of oil contracts, since the traditional privileges namely up to the mid-twentieth century, it was found that environmental issues had not been raised in the contracts in this period of time and only one of the advantages had dealt with such issue which was itself incomplete and lacked a clear mechanism. Gradually, in the contracts which were concluded by the mid-twentieth century onwards, provisions regarding the protection of the environment were inserted therein and at the present time most of the oil contracts contain such provisions. In some contracts, there are detailed and specific commitments to environmental protection also related to dismantling of facilities and protecting the environment of indigenous peoples living in the area of operation; however, a study of different contractual patterns shows that the provisions of the contracts are mostly general and vague and, in many cases, they are not able to impose specific obligations applicable to investing companies. It seems that investee countries preferred the attraction of investment on environmental protection and in this respect they just mention some general rules.

Keywords: environmental clauses, oil contracts, principles of international law of the environment, sustainable development.

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Criticizing europeanunioncountermeasure (oil sanction) against Iran from the aspect of the law of international responsibility of state

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Abstract

The European Union council in 23 January of 2012, in direction to aggravate international pressures against Islamic Republic of Iran, decided to enact further economic restrictions against this country in energy section especially against importing oil from Iran to the state members of European Union. The reason of imposing sanction by EU against Iran is Iran's non-compliance of NPT obligations and the potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities due to the preamble of UN. S.C Resolution 1929. European Union referred to the responsibility of Iran according to 2001 international law commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, and prohibited imports of oil from Iran as a Countermeasure. But has Iran breached its NPT obligations? Have the European Union and its member states observed the preconditions of countermeasures against Iran according to international law commission Draft Articles on Responsibility of States for Internationally Wrongful Acts? In this article, the legality of European Union Countermeasure against Iran is considered by analyzing the Draft articles on the International Responsibility of States, and it is found that the European Union has observed none of the preconditions of countermeasures against Iran according to international law commission Draft Articles on Responsibility of States for Internationally Wrongful Acts.

Keywords: countermeasure, draft articles on the international responsibility of states, European Union, International law, Iran, oil sanction, .

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