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Legal Challenges to Implementing the New Oil and Gas Law in Iraq

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ABSTRACT

The Iraqi oil and gas law was not born of chance with the discovery of oil. Rather, it was a logical consequence of the historical development of oil and gas law and the obstacles it encountered, the most important of which was the sovereignty issue, which we addressed in the introduction to this research. The licensing method and the effectiveness of administrative oversight in granting these sensitive contracts were the basis for approval. The oil sector in Iraq is considered one of the primary economic resources that contribute significantly to the economy. The legal framework for oil extraction contracts is a pivotal element in ensuring national benefit. To regulate this vital sector, oil operations are managed in a legally and transparent manner. These contracts aim to define the relationship between the Iraqi government and local and international companies, ensuring the preservation of the state's rights to its natural resources and providing an investment environment that encourages partnerships with international companies. This legal framework presents significant challenges, as it requires coordination between the various stakeholders, in addition to balancing economic and political interests. This is what we reviewed in our research by examining the shortcomings of the licensing method and the effectiveness of the administration's oversight during the approval and granting of petroleum licenses.

Keywords: legal challenges to implementing the new oil and gas law in Iraq

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INTRODUCTION

The starting point for this research is the Iraqi federal court ruling issued in 2022, which annulled the oil and gas law passed by the Kurdistan Region in 2007, requiring coordination of all oil contracts through the federal Ministry of Oil. Despite the massive depletion of Iraq's oil resources, which represent the cornerstone of economic renaissance, especially after Iraq emerged from the catastrophe of the American military occupation, the tails of the economic occupation still haunt successive generations of Iraqis as a result of the opening of the oil sector to major foreign companies carrying the nationalities of the American, British, and French coalition countries. The past is a lesson for us. Just as the Crusades against the Arab East were under the guise of protecting the Christian religion, but within them were a deep-seated hatred for plundering the East's wealth, history repeats itself. The failure suffered by the American government before its own people and the world forced them to re-embellish the image by claiming that the future of the American citizen is dependent on Iraqi oil, and that this oil is the right of the American people, a false claim. The philosophy of Iraq's oil and gas law, which has been awaiting parliamentary legislation since 2005, is that the responsibility for managing the country's oil fields should be vested in a national oil company, overseen by a federal council specializing in this matter. However, the law has been postponed several times during previous parliamentary sessions and has not been included in parliamentary laws and legislation.

The law remains controversial, with talk of preparing a new version following disagreements over its passage amidst divergent political views. The law is considered a radical solution to the dispute over oil wealth and regulates all energy issues throughout Iraq. Despite its potential to help resolve disputes, the law faces numerous obstacles. Political interventions, driven by external agendas, obstruct its passage within the Iraqi Parliament. It is astonishing that Iraq has not achieved any developmental or economic progress since 2003, because successive governments have been and continue to be unable to advance Iraq's economic situation. Enacting an oil and gas law is not an easy task, especially since its enactment has been postponed for many years due to political, legal, and technical disagreements. This requires a long time to agree on the form and content of the law. The importance of the oil and gas law stems from its potential contribution to increasing oil production capacity and national gas investment, and effectively regulating production and export capacity, estimated at more than four million barrels per day.

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Research Importance: The importance of the research lies in clarifying the true legal challenge and the obstacles preventing the issuance of a genuine oil law that regulates Iraq's petroleum resources.

Research Methodology: Based on the nature of the research and its objectives, I adopted an inductive-deductive approach as a focus to achieve the research objective. This approach combines the induction and deduction of specifics to arrive at concrete results, utilizing a comparative approach to draw on countries' experiences on the same topic.

Research Difficulty: The difficulty of research lies in the differing geopolitical nature of each country. What may be acceptable in one country and society may not be appropriate in another, especially if the society has ethnic tendencies.

In this research, we will address the legal challenges of implementing the new oil and gas law in Iraq through two sections. Firstly**,** the historical development of oil and gas law in Iraq and the contemporary sovereignty complex. Secondly, disadvantages of the licensing method and the effectiveness of administrative oversight

The Historical Development of Oil and Gas Law in Iraq

Iraq defined itself as an oil country at the beginning of the twentieth century, initially with German interest, through several missions dispatched to Iraq between 1871 and 1902. The reports of these missions clearly indicated that the oil fields of northern Iraq were astonishing and invaluable, and that Kirkuk and its environs represented a vast oil region, which the German government must expedite its development (Al-Dihi , 2020).

At that time, Iraq was under the rule of a state that had, by fate, reached a state of complete senility: the Ottoman Empire, or as it was known in the late nineteenth and early twentieth centuries as the "sick man." It had no choice but to contend with its weakness in the face of the American, British, and German eyes eagerly watching the treasures of black gold lying deep within Iraqi territory.The tide of fate turned decisively when the British fleet, the world's most powerful at the time, switched from coal to oil. This forced the British Crown to make every effort to secure the new fuel to sustain its fleet, which was then roaming the world. The ottoman empire granted Britain initial approval to explore for oil in the provinces of Baghdad and Mosul, but the outbreak of world war I did not delay this agreement. In a

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similar fate to that of a deceased person after his death, the Ottoman sick man's estate was divided up, and Iraq became a British mandate (Al-Sharif, 2000).

Oil was not a concern for Iraqis in general, as agriculture and land ownership were the dominant interests in the fierce competition among social classes at the time. By the 1920s, Iraq had become a country ruled by the Hejaz crown, headed by King Faisal I, and this new situation necessitated the resumption of oil exploration. The nascent Iraqi state was unable to compete with the fierce lion in London and negotiate with him on the supposed footing of equality between two states. The result was that the exploration concession was limited to what was stipulated in the ottoman agreement, with the exception of the Basra Vilayet and the territories bordering Iran, and that the concession term not exceed sixty years from the date of signing the agreement. In 1925, the Iraqi government submitted to a position it would not have accepted under normal circumstances. When the crisis over the fate of the Mosul Vilayet which currently represents the entire northern third of Iraq, including Kirkuk erupted, and the Iraqi-Turkish dispute was referred to a League of Nations committee, Baghdad reluctantly agreed to grant the Turkish petroleum company an oil exploration concession in the disputed province as a condition for resolving the dispute over sovereignty in Iraq's favor.

This was not the only conflict; other foreign eyes were still greedily watching the treasures of black gold that Iraq's land held. After much tug-of-war, Iraq's oil wealth was managed through the Iraq Petroleum Company, divided equally between Britain, France, the Netherlands, and the United States (23.75 percent each), in addition to a 5 percent share awarded to the well-known Armenian businessman Calouste Sarkis Gulbenkian, who after that share became known as "Mr. Five Percent (Salman, 2009). Things proceeded as planned, and the Iraq Petroleum Company continued to manage the exploration, extraction, and sale of Iraqi oil, a process that generated significant financial benefits for Baghdad only by the middle of the last century.

The Transition to Iraqi Hands

By the middle of the last century, the Reconstruction Council was established in Baghdad. The name of this council was once again associated with the return of oil to the forefront, especially with the increasing oil discoveries in the Gulf region. The Iraqi side reached an agreement to amend the country's share of its British-extracted oil to six gold shillings per ton, instead of the previously established share (four shillings), effective January 1950. This

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represented a financial income for Iraq exceeding 17 million dinars at the time. This figure had a somewhat positive impact on the Iraqi government's thinking about exploiting oil for the first time through a series of council projects launched successively in the mid-20th century. The government announced the allocation of 70 percent of oil revenues to implement several service projects in the country, which were launched successively during the final years of the monarchy (Alwan, 1982).

The most prominent of these projects is seen daily by Iraqis as they inhale the scent of gas while passing on the highway leading south of the capital, Baghdad. There, where the Tigris River flows on three sides, the foundations for the construction of the well-known oil refinery in the Doura area were laid, fed by oil from the Kirkuk fields via a pipeline. Half a century after the discovery of oil in Iraq, the tide turned again, this time eastward. In the 1960s, slogans calling for the recovery of plundered wealth and the people's right to exploit it as they wished swept across Iraq and the region. The government of Abdul Karim Qasim crowned these slogans with the issuance of Law No. 80 of 1961, following marathon negotiations with foreign companies. This law reverted 99.5 percent of the unexploited lands granted to foreign companies to the Iraqi authorities. [(1)] But the turbulent winds of the 1960s did not spare Qasim much time. After the collapse of his regime in February 1963, the government of his successor, Abdul Salam Arif, was able to sign an agreement with the Iraq Petroleum Company based on the principle of mutual benefit, or "win-win." Law No. 80, passed during Qasim's reign, recognized foreign companies operating under the Iraq Petroleum Company in exchange for increasing their share of unexploited land, particularly in Rumaila, while training cadres from the newly established National Oil Company. However, this agreement was not destined to last long. With the Ba'ath Party coming to power in 1968, everything changed with the issuance of a law nationalizing the Iraq Petroleum Company's operations in June 1972. The oil exploration concession period, which had been signed during the monarchy, was nearing its end. After that period, the Ba'ath government sided with the Soviet bloc with the signing of the Cooperation Agreement between the two countries in 1969 and the Friendship Agreement in 1972. By that time, it had become clear that the Iraqi economy had become a single-source economy, with its dependence on oil accounting for nearly 95 percent of its revenue, and with distorted features. It was now subject to fluctuations in the global oil market, which could collapse in the event of a sharp price drop or an oil surplus.

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Signs of this became apparent with the drop in oil prices in 1987, which pushed Iraqi decision-makers toward destructive policies that culminated in the invasion of Kuwait in the summer of 1990.

Iraq entered the dark tunnel as the ashes of its second military adventure in the Gulf settled. As the world entered the final decade of the twentieth century, the country's economic and social situation declined to unprecedented levels. As America prepared to invade Iraq in early March 2003, Iraq's oil exports from within the country had reached approximately ten million barrels, distributed across approximately seven tanks, each with a capacity of over one million barrels, and were supposed to be transferred to buyers' vessels. It stands to reason that such a massive volume of oil, coming from a country that had fallen under American occupation within three weeks, would find no one to safeguard or care for it, given the withdrawal of the UN representative who had been monitoring the sale process in accordance with the Memorandum of Understanding.

Following the formation of the Iraqi Governing Council and an interim government, a delegation from the new Ministry of Oil, accompanied by an American delegation, visited the port of Ceyhan. The Security Council issued its resolution to lift the economic embargo on Iraq in mid-2003. Fate turned again in the early years of this century, returning to the same state it had been at the beginning of the previous century, with foreign companies once again competing in oil licensing rounds to explore and develop fields spread across the country. Many questions may arise more than a century after the birth of "oil Iraq": Did the oil bounty come to the Iraqis at a time when they were ready to deal with it appropriately? With the escalation of disputes between Baghdad and the Kurdistan Region, the heated disputes over the oil and gas law since 2007, and the occasional discovery of corruption and thefts worth billions of dollars, oil represents the only common factor between all these thorny issues.

The contemporary sovereignty complex in oil exploitation contracts

The core of the dispute stems from a dispute over sovereignty over oil rights, production, and revenues. While Baghdad wants all rights to be vested in the central government, with revenues going to a single account under central government oversight, the Kurdistan Regional Government (KRG) wants the right to contract with foreign companies and for revenues to be channeled into its own accounts, independent of Baghdad's authority(Abu Zaid, 2004. The draft oil and gas law stipulates that the responsibility for managing the

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country's oil fields should be vested in a national oil company, overseen by a federal council specializing in this matter. Meanwhile, the KRG says the Iraqi government "has the right to participate in the management of fields discovered before 2005, but fields discovered after that fall under the jurisdiction of the regional government." The political system based on sectarian quotas is the primary source of conflict (Al-Ahdab, 1982). Observers say that if oil and mineral wealth were divided based on citizenship, with revenue rights divided based on population, the dispute over other details would be merely technical. Currently, it is a dispute between two parties, each seeking to impose its sovereignty. The central government assumes that it is the government for all of Iraq, while the Kurdistan Regional Government assumes that the federal system allows it to control the region's oil revenues. This has been the subject of both a legal and political dispute.

In February 2022, the Federal Court in Baghdad issued an order requiring the region to hand over oil produced on its territory to Baghdad and to cancel contracts it had signed with foreign companies. The decision also invalidated contracts signed between the regional authorities and several foreign companies. Observers say that for the ruling parties in Baghdad, the issue is not limited to sovereign motives, but also includes motives related to Iran's reservations about the region having its own source of funding, not subject to central authority oversight. This constitutes a material basis for separatist motives. Following debates surrounding the need to approve a three-year general budget, a temporary agreement was reached between Baghdad and Erbil in early April. According to this agreement, Kurdistan's oil sales will be conducted through the State Oil Marketing Organization (SOMO), while revenues generated from the region's fields will be deposited in a bank account at the Central Bank of Iraq or one of the banks approved by the Central Bank of Iraq. From the above, the importance of addressing the shortcomings of the licensing method and the effectiveness of administrative oversight over them becomes clear, as discussed in the following chapter.

Disadvantages of the Licensing Method and the Effectiveness of Administrative Oversight

It is inevitable that legislators in most countries resort to establishing, activating, and developing a legal system for administrative oversight of resource and wealth licensing contracts, particularly petroleum ones. Legislators distribute oversight jurisdiction between two main entities: the entity responsible for concluding the contract and the entity responsible for approving it and granting the petroleum license. This responsibility can be divided

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between two primary entities, whether in the phase prior to the contract's entry into force by restricting contractual freedom with procedural or substantive restrictions, or in the subsequent phase by regulating supervisory and guidance oversight and granting a role to representatives of the contracting entity in managing and implementing the contract, in partnership with the license holder. This enables them to exercise internal oversight and regulate the consequences of such oversight when implementation deviates from legal or contractual legitimacy. Oversight of petroleum licensing contracts has evolved in tandem with the development of the contracts themselves. While companies licensed under traditional concession contracts were considered entities alien to the state due to weak oversight, given their exclusive ownership of the petroleum and management of the contract's operations, which often spanned a long period and were subject to meager financial obligations, they have become subject to close oversight of their operations under joint venture contracts, in which the administration exercises the oversight of a partner over the activities of its partner, and contracting contracts, in which the contractor is merely a contractor working for and under the administration's supervision and direction. To clarify the nature of the administration's oversight of petroleum licensing contracts, we must first define the concept of these contracts and then the concept of oversight over them. Therefore, we will divide this section into two sections. The first section addresses the concept of licensing contracts, while the second section addresses the effectiveness of the administration's oversight of petroleum licensing contracts.

THE THEORETICAL CONCEPT

The Concept of Petroleum Licensing Contracts, Their Elements, and Their Legal Nature

First: The Nature of Petroleum Licensing Contracts

These contracts have sparked widespread controversy over their naming, both within jurisprudence and among the licensing states and companies. Until recently, the term "petroleum concession contracts" was the common term, but it has been abandoned because it evokes colonial domination over states. Consequently, new terms have emerged, such as "international economic development agreements" and "economic development agreements." A group of jurisprudence criticized these terms because they portray these contracts as aid contracts for the contracting state. They called them "international economic contracts," as

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they fall within the framework of the economic development policy of the contracting states, which defines the mutual rights and obligations between the two parties (Abdel Hamid, 2015).

Another group criticized by Suleiman (1966) these terms and preferred to use the term "petroleum contracts," because the term "agreement" applies within the scope of public international law. The purpose of using these terms is to internationalize these contracts and focus them on the economic aspect. By highlighting the role of the foreign party, the state's need for economic development, and although we support the latter opinion, calling it "petroleum licensing contracts" is better from a legal perspective, because the license constitutes the legal act through which the oil-owning state authorizes the management and exploitation of its petroleum resources, based on a specific type of contract permitted by law. The exploitation of petroleum resources can only be done with a license, and this license is regulated according to the type of contract approved by the state (concession, partnership, contracting). This is confirmed by the Iraqi Oil and Gas Law Draft of 2011, as Article 15 stipulates that "oil operations licenses shall be granted on the basis of an exploration and production contract between the ministry and an Iraqi or foreign person." The researcher believes that it can be defined as "a dual legal act (license - contract). The license is an individual administrative decision that creates, but it is a complex decision, by virtue of which the state grants..." The license is granted to the contracting company to exploit petroleum within a specific area for a period of time. The rights and obligations of both parties are regulated by a private law contract (Al-Ghanimi, 1960).

Second: Elements of a Petroleum Licensing Contract:

From the above, it is clear that these contracts consist of two elements: the license and the contract, as follows:

1. The Petroleum License

As a legal act, the license is a necessary procedure for the validity and legality of contracting with a third party and granting them the necessary powers for this purpose. Therefore, neglecting it or issuing it by an incompetent entity results in the nullity of the contract. Therefore, the petroleum license constitutes the basic act issued by the competent authority, as the entity that owns the petroleum resources or is authorized to manage and exploit the

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petroleum facility. This entity possesses the exclusive right to manage and exploit these resources, directly or indirectly.

2. Contractual Regulation of the Petroleum License

The contract regulates the method and manner of licensing. The right to manage and exploit petroleum resources depends on whether or not the management of the contract is limited to the licensee, whether exploitation is on behalf of the state or the licensee, and whether the licensee is authorized to carry out all or part of the petroleum operations. In oil facility concession contracts, the petroleum license grants the license holder the exclusive and absolute right to manage, exploit, and own the petroleum produced on his own account, without restriction, by implementing all petroleum operations, starting with exploration, drilling, and drilling, and then production, transportation, marketing, and sometimes refining (Majeed, 2021). In joint venture contracts (Bakr Badawi & Qader Ismai, 2020), the state grants the exclusive license to manage, exploit, and own the petroleum produced jointly between a foreign company and one of its affiliated public institutions. The two parties establish a joint venture company to act as the executor on their behalf, or the state grants the exclusive license to a foreign company, provided that, after the discovery of petroleum, a joint venture company is established with half, more, or less of its shares. The government side may grant the exclusive license to the national institution responsible for managing the petroleum facility, and it may involve the foreign company with it.

In contracting contracts by Talha (2021), the exclusive right to manage, exploit, and own the produced petroleum remains with the state. The license is granted to the contractor to work for the state and under the supervision of the national party. He is neither a concessionaire working for himself alone, nor a partner working for himself according to his percentage of participation. Rather, he is merely a contractor for the national party on behalf of the state, undertaking petroleum operations in exchange for a cash or in-kind payment.

Third: The legal nature of petroleum licensing contracts.

Petroleum licensing contracts have sparked widespread controversy in jurisprudence regarding the legal system to which they belong, as follows:

1- Petroleum licensing contracts are international contracts subject to public international law. Legal advisors for foreign petroleum companies (Al-Mutairi, 2024). have

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led the trend calling for the internationalization of these contracts, citing various arguments. The international judiciary's rejection of the idea of internationalization is beyond doubt. In the 1952 case of the nationalization of the Anglo-Iranian oil company, the international court of justice rejected Britain's view that the contract signed between the Iranian government and the aforementioned company was of a dual nature, consisting of a concession agreement between the government and the company and a treaty between the two governments. The decision stipulated that Britain was not a party to the contract, and that the purpose of the contract was to regulate the relationship between the Iranian government and the company and not to regulate the relationship between the two governments. In the Aramco case, Britain rejected... The arbitration panel accepted the American company's view that the contract concluded with Saudi Arabia in 1933 was an international treaty.

2- Petroleum licensing contracts within the framework of domestic law

There is no doubt that domestic law is the natural environment for these contracts. However, jurisprudence (Abdel Hamid, 2015) has differed regarding the legal system to which they belong within the framework of domestic law, with several approaches. We will present these approaches as follows:

These contracts have sparked widespread debate among public law (Nassar, 2023) and private law (Al-Jawhari, 2020) jurists regarding whether they belong to either of the two aforementioned laws. To favor either of these approaches, it is necessary to clarify the distinctive conditions of the administrative contract theory, namely that the administration is a party to the contract, that this contract relates to the implementation of a public utility, and that it includes exceptional conditions.

2: Petroleum licensing contracts of a mixed nature of public and private law

This trend holds that these contracts are of a mixed nature, combining the characteristics of public law and private law and are governed by both laws. The element of authority known in public law and the element of equality known in private law appear in them. The final word in determining the predominant elements in the contract is that if it is administrative, it is subject to public law, and otherwise, it is subject to private law. In fact, this trend does not differ from the division of French jurisprudence (Al-Mutairi, 2024) of the administrative concession contract into regulatory conditions that create a non-personal legal status that the administration can amend, and contractual conditions that cannot be affected except by

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agreement between the two parties, such as financial conditions. This trend does not remove the contract from the realm of public law.

3: Petroleum licensing contracts of a single legal act.

A group of scholars, led by the French jurist "Jeze," have held that a mining concession, including a petroleum concession, is not an administrative or civil contract, or a combination thereof. Rather, it is a single legal act, a mere license that the government may amend at any time. While this view is sound, it cannot be accepted in its entirety, as the existence of contractual conditions, such as financial conditions, cannot be denied, as they are not included within the terms of regulating the facility. Based on the aforementioned jurisprudential opinions, we see that these contracts are a composite of a single legal act: a license issued by the sole will of the state pursuant to a law or administrative decision to manage and exploit the petroleum facility, and a contract regulating this license. This contract is an administrative contract, fulfilling the conditions of an administrative contract, having been concluded by an administrative body with the intent of achieving a public economic benefit, and involving unusual conditions.

The Second Requirement, the Effectiveness of Administrative Oversight of Petroleum Licensing Contracts and Its Legal Justifications

The public interest is the core of the administrative authority to oversee petroleum-related licensing contracts. There is no doubt that this authority is not based solely on the terms of the contract, but rather on the general authority of the administration, as it is responsible for ensuring the regular and consistent operation of the public petroleum service. This authority is justified both within the framework of international law and within domestic law. Accordingly, we will address the concept of administrative oversight of these contracts as follows:

First: - Definition and Explanation of Its Characteristics:

1- Definition: It is a complex and integrated activity that integrates the sciences of law, economics, management, and accounting, as well as technical, environmental, and social aspects, to ensure that the work completed has been implemented in accordance with the plans established in advance. This enables the identification of areas of success or weakness and the adoption of appropriate decisions to ensure the proper use of public funds in a manner

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consistent with the objectives of the administrative organization and serving the public interest((Muhammad Saeed, 2005) .

2- Characteristics:

1- The essence of oversight is the exercise of sovereign authority: The administration's oversight of licensing contracts is an inherent authority and a sovereign exercise, as it is one of the state's powers inherent in ownership rights and permanent sovereignty over natural resources, as well as its jurisdiction and authority over its entire territory, which cannot be violated or waived. The administration enjoys these powers, whether explicitly stated or not, as they are texts that reveal an established and confirmed right (Al-Ahdab, 2024).

2- Oversight is a right and a duty: The administration does not exercise an activity in a vacuum, but rather derives its legitimacy from the existence of a legal instrument, regardless of its source (the constitution or legislation). The holder of the right is the executive authority or specialized oversight bodies. The content of the right, however, is the set of powers that empower its holder to take the necessary measures to achieve the purpose.

While oversight, in its true form, does not necessarily mean that the administration can exercise oversight, it is the administration's duty to control the activities of licensed companies and take appropriate measures to ensure the implementation of the state's plan. This is because the decline of the state's oversight role, the decline of its influence, and its relinquishing of its position will lead to the growing power of these companies, especially since the latter have the ability to create a regulatory balance. If they oppose the policy of a particular government, they can reduce or halt production under various pretexts, or even overthrow the existing political regime. An example of this is the American company I.T.T., which played a role in the overthrow of the regime of Salvador, the president of Chile, in 1973.

Second: Foundations of Effective Oversight: Oversight is based on two fundamental pillars: the first is the presence of employees who possess the academic qualifications and experience to review and monitor the licensee's implementation of its financial, technical, and administrative obligations. The second is the investigation of... Legislative stability in the petroleum sector: Although the state has the right to amend or repeal its petroleum legislation as it pleases, or to establish, repeal, or limit a right, the frequency of these amendments, at close intervals, due to the requirements of the general economic system, leads to the

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expansion of legal texts, their complexity, fragmentation, or contradiction with other texts. This leads to a lack of clarity in these laws among administrative observers, especially in light of the absence of explanatory regulations, and the destabilization of transactions and the absence of legal security for those dealing with the state.

Third: Objectives of the Administration's oversight of petroleum licensing contracts:

A. Verifying compliance with the rules of jurisdiction in concluding contracts, negotiating procedures, and selecting contractors, such as respecting the principle of equality among competitors and the principle of openness and transparency in contracting procedures. Verifying the extent to which competitors meet the required conditions, whether legal, financial, or technical, to obtain the best bids from the competitors, and verifying the extent to which the contractor complies with competition procedures.

B. Verifying the accuracy of implementing approved plans, work programs, and financial budgets in accordance with legal and contractual provisions and the state's general policy, in accordance with international petroleum best practices. Reducing wastefulness, ensuring the proper use of public funds for their designated purposes, verifying the validity and integrity of financial transactions and procedures, and detecting violations to take deterrent action.

C- Identifying the problems facing the contract according to the data obtained from the oversight process and alerting the legislative and executive authorities to any shortcomings in the legislation or in the contract texts and working to address them.

Second: Legal justifications for the administration's oversight of petroleum licensing contracts:

One of the legal justifications for oversight of these contracts within the framework of international law is the principle of permanent sovereignty of states over their natural resources, which is considered one of the fundamental and established principles of international law. It may not be violated, nor is it subject to acquisitive or extinctive prescription. It is not affected by the state's failure to exploit its resources or its failure to protest the exploitation of its resources by others without a license. This is not considered a waiver of its sovereignty. To ensure the preservation of the state's permanent sovereignty over its natural resources, it must impose continuous oversight over the exploitation of these resources. Furthermore, the rules of international responsibility established by international

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resolutions and charters require the state to take adequate measures and precautions to monitor activities under its jurisdiction and oversight, or those licensed by it, to prevent or deter any violation of international obligations and to avoid... Arranging international responsibility for the violation and paying compensation resulting from this breach, including Article (11) of the Stockholm Convention of 1972, which stipulates (the responsibility of the state for damages inflicted on other states whenever this is due to investment activities subject to its national sovereignty (Kazem Shabib, 2009).

Among the legal justifications within the framework of domestic law is that oversight is imposed based on the public ownership system of petroleum resources, which is almost unanimously adopted internationally in domestic laws, with the exception of the United States of America, which adopts the private ownership system for petroleum underground. The requirement of this system is that the owner of the surface of the earth does not own what is underground, but rather it is considered public property. As a result of this system, the state (the owner) has the right to oversight of its property, in addition to imposing a basis for the existence of the public utility, as the jurist Jeze believes that the nature of the latter is the legal justification for oversight, since the necessities of managing the utility allow the administration to exercise this authority.

3. Legal Challenges to Implementing the Oil and Gas Law

The legislator is keen to distribute jurisdiction in the field of prior oversight among several entities, starting with the entity responsible for concluding and signing the contract, and ending with the entity responsible for approving it. A contract does not become legally effective merely by signing it. Rather, the law requires that the contract documents be referred to another entity responsible for reviewing and approving them. In this section, we will address the first challenge through the first section, namely the effectiveness of administrative oversight during the contract conclusion stage, and the second challenge in a final section, entitled "administrative oversight during the approval and granting of petroleum licenses."

First Requirement, the Challenge of Administrative Oversight during the Contract Conclusion Stage

There is no doubt that the effectiveness and proper organization of public administration in the state requires the legislator to identify the entity competent to conclude the contract, as

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well as the entity competent to oversee its conclusion at this stage, and to determine the procedures to be followed to initiate legal proceedings, as follows:

First: The entity competent to conclude the contract:

States' legislation varies among them in granting the authority to conclude petroleum licensing contracts. In most countries, this authority is granted to the ministries responsible for petroleum affairs, as they are the regulatory and supervisory body of the petroleum sector. The contract is signed by the relevant minister or his/her authorized representative, if permitted by law. In other countries, this authority is granted to an entity specialized in concluding the contract, with the corporation or national oil company being the entity participating in implementing petroleum operations as the national partner in the contract (Kazem Shabi, 2009).

Other countries have granted this jurisdiction to the National Oil Corporation. In Libya, the authority to conclude contracts was granted to the National Oil Corporation under Article 5 of the Corporation's Law No. 24 of 1970, which stipulates that "the Corporation shall have the right to exploit areas...through contracting or through partnership". As for Iraq Kazem Shabib, (2015), the petroleum sector has suffered greatly from legislative instability. In granting this jurisdiction to a specific party, it is noted that the National Oil Company was the competent authority under Clause (2) of Article (3) of the Law on Allocation of Investment Areas to the National Oil Company No. (97) of 1967, which stipulated that (the Iraqi National Oil Company may invest in any of the areas allocated to it through partnership with others...). After the National Oil Company was abolished by virtue of Resolution No. (267) of the dissolved Revolutionary Command Council of 1987, the Minister of Oil, in accordance with this resolution, became the one competent to sign contracts, as Article (Third/3) thereof stipulated that (the Minister of Oil replaces the Board of Directors of the company wherever stated in the laws, regulations and instructions.). The legislator granted the extractive companies affiliated with the Ministry of Oil, which were established in place of the National Oil Company (abolished), the jurisdiction to conclude the contract as its heir in all rights and obligations, as well as as one of the public companies that specialize in concluding contracts under Article 15 of the Public Companies Law No. 22 of 1997, as amended, which stipulates that “the company has the right to participate with Arab and foreign companies and institutions.” Although it is considered the competent authority to conclude the contract and has signed service contracts, all procedures related to concluding the contract, starting from

DOI: 10.48165/sajssh.2025.6606

the preliminary stages and ending with awarding the tender, were carried out by the Petroleum Contracts and Licensing Department, which is one of the departments of the Ministry of Oil that was established by a decision of the Council of Ministers in July 2007 to specialize in developing contract models and implementing negotiation and tendering sessions. Following the issuance of National Oil Company Law No. 4 of 2018, this company became the competent authority for concluding these contracts. Article 4/Second stipulates that "the company shall adopt the following means to achieve its objectives... Second: Concluding exploration, production, and export contracts in accordance with state policy, provided that such contracts do not conflict with the provisions of the Constitution". In light of this, we hope that the federal legislature will achieve legislative stability in determining the competent authority for concluding contracts within the federal Ministry of Oil, and that the National Oil Company will be the national partner with licensed companies in implementing all contracts concluded by the ministry, as this will contribute to the company's effective participation in all contractual activities.

Second: Oversight procedures during the contract conclusion stage.

The legislator often specifies the procedures that the administration must undertake at this stage to ensure effective self-control. Among the most important of these procedures are obtaining initial approvals, preparing the standard contract specifications, and then selecting the contractor and signing the contract, as follows:

1- Obtaining Initial Contract Approvals:

It is recognized in administrative jurisprudence that if the legislator stipulates that a contract must be approved by a specific entity, this is considered a matter of public order, as it is based on fundamental reasons related to the public interest. Failure to do so results in the contracting party's action being deemed a mere material fact, and the contract is deemed void. The Libyan legislator among the comparable countries has followed this approach and requires the contracting party, under Law No. 24 of 1970, to obtain the Cabinet's approval for the contract before initiating contracting procedures, whether under partnership contracts, contracting contracts, or any other contracts, after consulting the institution's board of directors. As for Iraq, petroleum legislation is devoid of this, but we see the need to obtain the approval of the federal government for the purpose of coordination with the local government and other government departments within the scope of the proposed contract area. We hope

DOI: 10.48165/sajssh.2025.6606

that the federal legislator will follow the Libyan legislator in this direction and explicitly stipulate this.

2- Preparing the Standard Contract Specifications:

As a result of the growing role of oil states in the legal regulation of petroleum contracts, most countries have adopted petroleum legislation that adopts the standard contract system, which includes regulatory conditions that cannot be agreed upon otherwise, and contractual conditions that vary from one contract to another and are subject to negotiation and discussion.

The Libyan legislator, however, went further (Abdel Hamid, 2015), issuing the Petroleum Law of 1955, accompanied by a standard contract specifications document, comprehensively defining its contents. Article 1/9 requires the administration to prepare the contract specifications for each contract area in a manner that is fully consistent with the standard contract specifications attached to the law. The law also allows for additional benefits and advantages to be included in the contract, provided that these do not diminish the rights and benefits granted to the Ministry of Oil under the law and the attached contract. As such, it is a piece of legislation that the legislative authority has the authority to amend.

As for the Iraqi legislator (Kazem Shabib, 2015), he did not follow the comparative countries in issuing a model specifications book by law or based on a law. Due to the importance of working with this system, we call on our legislator to follow the comparative countries in adopting it explicitly. However, the administration, whether the Federal Cabinet or the Ministry of Oil, can issue a standard specifications book, given its regulatory powers for petroleum activity, pursuant to Article (35) of the Ministry of Oil Organization Law No. (101) of 1976, as amended, which states: (First: Regulations may be issued to facilitate the implementation of the provisions of this law. Second: The Minister may issue instructions to facilitate the implementation of the provisions of this law and the regulations issued pursuant to it.) Among the provisions contained in this law is Article (9/First), which defined some of the Ministry's responsibilities, stating: (e- Supervising the implementation of oil service contracts). There is no doubt that the proper implementation and supervision of these contracts requires the preparation of contract requirements at the contracting stage, the most important of which is the preparation of a standard specifications book for the contract. Accordingly, the Ministry issued two types of service contracts as model contracts, which

DOI: 10.48165/sajssh.2025.6606

were adopted as the basis for contracting in current petroleum licensing contracts. These contracts include similar provisions, with some differences in the scope of the contract. These include the Technical Service Contract (TSC), which is used to rehabilitate and develop producing or discovered but unexploited fields with the aim of increasing production. Under this contract, the net and stable production rate from producing reservoirs is determined, as achieved by the national company before the petroleum license was granted. The development and production service contract (DPS), which is used in undiscovered fields for petroleum exploration, development, and production, is based on the risk factor. If a discovery is not achieved, the contract terminates, and the licensee bears the loss alone.

3- How to select a contractor?

Although the tender method represents the basic method for selecting contractors for the legislators of most countries in the field of petroleum licensing contracts, as these contracts require financial and technical expertise and competence, and because this method achieves the requirements of transparency and integrity in selecting contractors, comparative legislation differs in determining the method for selecting contractors. The Algerian legislator adopted the tender method in Article 32 of the Hydrocarbons Law as the sole method in petroleum contracts and referred to the issuance of regulations specifying the procedures for selecting the areas offered in the tender and the criteria for qualifying applicants to the tender and submitting and evaluating offers. The Libyan legislator adopted the open bidding method in the amendment issued on July 3, 1961 to the Petroleum Law of 1955. The amendment issued pursuant to Law No. 6 of 1963 permitted the use of restricted bidding by receiving applications from those wishing to contract and inviting all of them by registered mail to send a representative to the ministry headquarters at a specific time to attend the opening of the submitted applications, in the presence of whoever the minister designates for this purpose.

In Iraq, petroleum legislation, specifically Law No. 97 of 1967 on the Allocation of Oil Investment Areas, which authorized the conclusion of contracts, did not specify a specific method for selecting contractors. There is also no unified law for tenders and auctions, but rather scattered texts obligating administrative bodies to follow specific procedures in selecting contractors. None of these texts apply to petroleum licensing contracts. Although the government contract implementation instructions regulate contracting procedures, these instructions limit the contracts concluded pursuant to them to public project contracts,

DOI: 10.48165/sajssh.2025.6606

consulting contracts, and supply contracts for goods and services. Therefore, petroleum licensing contracts are not covered by the provisions of these instructions.

Law No. 4 of 2018 on the National Oil Company also does not specify the method for selecting contractors. It appears that the legislator has left this to the discretion of the administration. However, we hope that the tendering method will be defined in an explicit legal text, as this will enhance transparency requirements in concluding these contracts.

In view of the legislator's silence on this, the Ministry of Oil adopted the method of licensing rounds to select contractors, by announcing the licensing round for field development on the Ministry's website and some local newspapers to invite international petroleum companies wishing to participate to submit their documents. A higher ministerial committee is then formed to receive the documents and identify the companies qualified to participate in the next stage according to the qualification axes (technical, financial, legal, training, health, safety and environment) and according to a global program for the qualification process. After that, the invitation letter to contract is directed to the qualified candidates to submit offers before the final receipt date, and according to the terms of the model contract and the specifications of the field offered for contracting attached to the invitation letter. Immediately after the deadline for submitting offers ends, the offers are opened and analyzed by the competent committee to evaluate the offers and choose the best candidate technically and financially according to two criteria: quantity Production and service fees, as the basis for comparison is the increase in production above the minimum target and the decrease in service fees provided by companies.

Based on the above (Suleiman, 1966), some believe that resorting to this method constitutes a violation of the law, as it is not stipulated in the applicable legislation and the Oil and Gas Law is not enacted. Furthermore, the contractor selection procedures contained in the instructions for implementing government contracts do not apply to petroleum licensing contracts, as previously mentioned. For our part, we believe that the aforementioned opinion is worthy of consideration, as this approach does not constitute a violation of the law, as the administration enjoys, in principle, contractual freedom, as it is considered one of the general principles of administrative law, unless the legislator restricts it procedurally or substantively with certain restrictions, such as specifying the means and procedures for selection. These contracts are based on personal considerations in selecting the contractor, which requires broad freedom for the administration in selection. The justification for this is its commitment

DOI: 10.48165/sajssh.2025.6606

to achieving the public interest to ensure the best possible management of public facilities. This is evidenced by what the French State Council stated in one of its decisions, that the administration is not obligated to adhere to the conclusion procedures stipulated by law for public procurement contracts when concluding a contract for a public facility, due to the necessity of personal considerations in selecting the contractor, on the one hand, and on the other hand, the administration is not obligated to follow a specific procedure when concluding these contracts when there is no legal or regulatory text obligating it to do so. If we have concluded that this method is legitimate, is it considered one of the methods known in administrative law, or is it a new method? The truth of the matter is that there is a trend that believes that this method is a new method, not one of the methods known in administrative law, and specifically, it does not match the tender method, while there are those who believe that this method is considered one of the tender methods. Specialists in the federal ministry of oil confirm that this method was implemented in accordance with the general principles of the tender method contained in the instructions for implementing government contracts issued pursuant to Government Contracts Law No. 87 of 2004, despite its non-applicability to these contracts, as the ministry followed the procedures of transparency, publicity, and competitiveness. There are those who believe that this method is an application of the open tender method (Jaber, 2023), while there are those who believe that it is an application of the limited tender method.

In turn, we tend to support the second trend, as it is one of the tender methods, specifically the limited tender method, as the administration carries out two procedures. In the first procedure, a general invitation is directed to all those wishing to participate in the tender (Al-Haddad, 2007), and then the documents related to legal, technical and financial qualification are received in accordance with the required qualification conditions. After the pre-qualification procedures for applicants are completed and the qualified companies are identified, in the second procedure, an invitation is directed to only those qualified to submit their technical and commercial bids for the purpose of study, evaluation and award.

4- The final challenge is preparing the final contract and signing it

After the award decision is issued to the best bidder, the contractual provisions contained in the standard contract adopted as the basis for the contract are amended, such as the work schedule, financial compensation, the financial guarantee provided to ensure proper implementation, the signing fees, and any benefits or advantages offered by the winning

DOI: 10.48165/sajssh.2025.6606

bidder. These contractual terms are negotiable, as the law, regulations, and instructions do not impose a ruling on the administration regarding them. However, the regulatory conditions, which constitute the majority, are imposed on both the contractor and the administration, as they are imposed by laws, regulations, and instructions and cannot be amended.

The contract is then signed to bring it into legal force. Because petroleum licensing contracts include a license granted by the owner or party authorized to manage petroleum resources pursuant to a law or administrative decision based on a contract, signing it does not produce its legal effect until after the issuance of this license. Therefore, we find that the Algerian legislator in the 2005 hydrocarbons law, among the comparative legislations, emphasized that the contract does not enter into force once it is signed by the national agency for hydrocarbons valuation (the contracting party), except after it is ratified by the council of ministers, the issuance of a decree approving it, and its publication in the official gazette. In Egypt, petroleum licenses are granted through laws and decisions from the house of representatives and the minister of petroleum and mineral resources. Obtaining a license to search for, prepare, and exploit petroleum in a specific area requires following specific procedures, including submitting an application with survey maps and fees. Decisions to grant the license are final after approval by the competent authorities (Eid, 2024).

In Iraq, the law allocating investment areas to the national oil company stipulated in Article 3 that a law be issued for the contract, meaning that the signature does not produce its legal effect except after ratification. Likewise, the model service contract stipulated in Article 39 that for it to enter into force after the signature and for the signature to produce its legal effect, the contract must be ratified by the competent authority and the contractor must be notified by the administration in writing of this ratification.

Second requirement, Administrative oversight during the approval and granting of petroleum licenses.

Countries agree to oblige the contracting party to refer the contract documents, after signing, to the competent authority for review and ratification. This review examines the contract and the extent to which the conditions for its validity and composition are met, including the conditions for preparing its clauses, selecting the candidate for the contract, and the validity of the terms of its conclusion, particularly with regard to the jurisdiction to conclude it. Some federal countries grant their regional units a role in this regard. We will address this stage through two points:

DOI: 10.48165/sajssh.2025.6606

First: The role of the central authority in ratifying the contract and granting the petroleum license:

Although the majority of countries have granted this jurisdiction to the central authority, they differ among themselves in determining the competent authority within the central authorities, as follows:

1- The legislative authority:

The majority of countries' constitutions and laws grant this jurisdiction to the legislative authority through the issuance of a law to that effect. This entitles this authority to exercise prior oversight over the contract. Jurisprudence and the judiciary have established that the law ratifying the contract it serves as a legislative oversight of some of the actions of the executive authority, given the special importance of these actions. It is not considered a law from a substantive standpoint, as it does not include abstract general rules, but rather is governed by the rule of law in terms of form and procedures only (Ezz El-Din, 2005). This is what the Iraqi legislator followed in the 1925 Constitution. Article 94 stipulated that "no exclusivity or privilege shall be granted to the investment of any of the country's natural resources... except by virtue of a law." However, subsequent constitutions were devoid of any provision regarding the legislative authority's authority to ratify contracts (Shabib, 2016). The legislator addressed this deficiency by enacting Law No. 97 of 1967 allocating investment areas to the national oil company. Article 2/3 stipulated that no contract for the investment of any field shall be concluded except by virtue of a law, and each contract shall be separately constituted. Some believe that the legislative authority remains competent in this regard, based on the fact that article 111 of the 2005 Constitution vests ownership of oil in the hands of the people, and that the legislative authority is their true representative. They also believe that there are previous laws that have not yet been repealed, most notably the aforementioned law, and therefore it is competent in this regard. (Talib, 2005).

2. The jurisdiction of the executive authority, some countries believe that ratification of these contracts requires freedom from legislative complications, as this jurisdiction is left to the executive authority. In Algeria, the Council of Ministers is competent in this matter under Article 11 of the 2005 Hydrocarbons Law, and the contract does not enter into force until the ratification decree is published in the Official Gazette (Al-Mahdi, 2008). In Libya, the Council of Ministers is responsible for this. Article 2 of the Petroleum Law of 1955 stipulates that “The Minister of Oil and Minerals shall present the matters mentioned in paragraphs (a) and (b) to the Council of Ministers for consideration and issuance of a final decision

DOI: 10.48165/sajssh.2025.6606

regarding them... B: Granting and canceling concession contracts (Sharif Ahmad, 2008). In Iraq, some believe that the federal government is the competent authority. Article 122 of the Constitution entrusts it with the task of managing petroleum resources, in consultation or coordination with the regions and governorates. It is the government that determines the manner of consultation or coordination. Public Companies Law No. 22 of 1997, as amended, authorizes, in Article 15, public companies to participate with Arab and foreign companies and institutions to implement related work to achieve the company's objectives within Iraq. This law does not require the contract to be legally approved. Furthermore, these contracts do not grant any ownership rights over the petroleum and do not provide any tax exemptions that require the issuance of a law. The law allocating oil investment areas cannot be relied upon in the jurisdiction of… Legislative authority, because a law cannot be relied upon to issue a law, but rather relies upon the constitution, which is devoid of any text on this. Furthermore, the draft oil and gas law has designated the competent authority as the Federal Council, which has less authority than the Council of Ministers. Until this law is enacted, the latter remains the competent authority (Kamel, 1980).

Second: The role of the regions in ratifying contracts and granting petroleum licenses.

The debate and discussion over granting regions a role in this jurisdiction in federal states has raged and received widespread attention. This has led some countries where oil is not a primary source of income due to the diversity of economic activities, to resolve this debate and grant regions exclusive jurisdiction over this matter, such as Canada, Australia, and Switzerland. In some rentier countries or those formed through the union of a group of independent states or emirates, each state or emirate retains this jurisdiction as a guarantee, such as in the United States of America and the United Arab Emirates (Kazem Shabi, 2016).

In other countries, others granted the regions the right to participate in this jurisdiction. In Iraq, Article 112 of the 2005 Constitution stipulated that: "First: The federal government shall manage the oil and gas extracted from existing fields, in conjunction with the governments of the producing regions and governorates... Second: The federal government and the governments of the producing regions and governorates shall jointly formulate the strategic policies necessary to develop the oil and gas wealth in a way that achieves the highest benefit for the Iraqi people, adopting the latest market technologies and principles, and encouraging investment." However, the text did not clearly define the method and function of each level of joint management, but rather referred to the issuance of a law to that effect. Article 5 of the 2011 Oil and Gas Draft Law defined the method of joint management by establishing a body to manage the petroleum sector called the "Federal Oil and Gas Council." It shall undertake

DOI: 10.48165/sajssh.2025.6606

prior oversight of contracts as the highest authority responsible for granting petroleum licenses. Despite the great importance of enacting this law as the legal framework However, these contracts have not yet been enacted, so the role of the region and the producing governorates in approving and granting petroleum licenses remains a subject of discussion and controversy at all levels.

Some believe that the Permanent Constitution of 2005 established joint jurisdiction between the central government and the regions and governorates in the field of oil and gas, even if these regions are not productive. They believe that not involving local governments in this jurisdiction constitutes a constitutional violation, as this jurisdiction does not fall within the exclusive jurisdiction of the federal government, in addition to the absence of federal legislation regulating the exploitation of petroleum resources. In light of this, article 1 of the Kurdistan region oil and gas law No. 22 of 2007 established a criterion for distinguishing between current fields subject to joint management and future fields subject to the exclusive jurisdiction of the region, which is the date of the adoption of the permanent Iraqi constitution. Article 4 of the law also specified the body responsible for approving petroleum licensing contracts in future fields, a body called the regional council. Although we believe that the federal executive authority is competent, as it is the body responsible for managing the petroleum facility according to the text of Article 112 of the Constitution and is charged with preserving petroleum resources, we see the necessity of activating the joint management of petroleum resources to reduce tension. Although the central government has the experience, technical and coordination capabilities, and the establishment of a coherent and comprehensive national policy to direct petroleum activity, its sole assumption of this authority may lead to neglecting the effects of petroleum operations on local communities, such as environmental, health, agricultural, or working conditions deterioration. Conversely, granting local governments this authority can enable local residents and communities to reduce the effects of petroleum operations. However, the lack of local governments' necessary experience to develop petroleum activity or to enter into complex contract negotiations and coordinate exploration and production strategies with other local governments leads to Local governments are seeking to grant petroleum licenses to foreign companies by submitting lower environmental or labor standards. Therefore, we believe that the optimal solution is through achieving joint management between the central government and local governments (regions and governorates) for petroleum contracts and their approval, whether in current or future fields, by forming temporary joint committees for each contract,

DOI: 10.48165/sajssh.2025.6606

consisting of representatives from the central government and local governments within whose administrative borders the contract area falls, and a representative from the Financial Supervision Bureau, for the purpose of reviewing and auditing the contract, and then approving and granting the petroleum license until the enactment of the oil and gas law or the enactment of a comprehensive petroleum code.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The regulatory purpose of these procedures is not to impose a penalty on the licensee for breaching their obligations per se, but rather as a means of deterring them from returning to the scope of legitimacy in implementing the contract. The study reached a number of conclusions and presented recommendations to address the research problem, as follows:

1- The term "petroleum licensing contracts" is the most accurate term, as a petroleum license constitutes the legal act through which the state or one of its authorized agencies authorizes the management and exploitation of petroleum resources based on a specific type of contract. Therefore, they are contracts granted with a license.

2- These contracts are a legal act of a composite nature consisting of a license issued by the competent authority at its sole discretion pursuant to a law or individual administrative decision, granting it the exclusive right to manage and exploit the petroleum facility to another person for a specified period in exchange for certain returns and under its supervision and oversight, and an administrative contract regulating this license.

3- The absence of legislative stability in determining the authority responsible for concluding these contracts negatively impacts the petroleum sector and those dealing with it, and the absence of legal regulation of contractual procedures in the stage prior to the contract entering into force, such as obtaining prior approvals, issuing the model contract, and the method of selecting contractors.

Recommendations

We call on our legislators to enact a comprehensive petroleum law, similar to those in comparable countries, that includes the following:

1- Achieving legislative stability by specifying the authority responsible for concluding the contract, with this authority being the Ministry of Oil, and the National Oil Company being the license holder in partnership with the foreign company.

DOI: 10.48165/sajssh.2025.6606

2- Regulating contractual procedures to enhance oversight in the phase prior to the contract's entry into force, such as obtaining prior approvals, issuing a standard contract specifications book, specifying the types of contracts that may be concluded, the method and procedures for selecting contractors, and the authority responsible for approval and granting petroleum licenses.

3- Regulating oversight procedures in the phase following the contract's entry into force, such as supervisory and guidance oversight, oversight of the contracting party's representatives, oversight methods, and the consequences of such oversight, whether remedial or deterrent measures, should oversight reveal a deviation in implementation.

DOI: 10.48165/sajssh.2025.6606

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Index

DOI: 10.48165/sajssh.2025.6606