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Explanation and Analysis of Farm-Out Agreement and Feasibility of Exploiting it in Upstream Oil and Gas Contracts in Iran

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Highlights

- The investors of oil and gas industry assign international petroleum agreements to which they are a party to other entities to share the cost and risks of performing the upstream projects.
- The mechanism of using farm-out agreement is the way to ensure the investors and host countries that the new party which will be a party to the contract (assignee) will do its obligations before any assignment of participating interest.
- Due to Iranian rules and regulations and the capacity of the current upstream contracts of Iran, farm-out agreement could be the instrument to absorb foreign investment and the need for technology in oil and gas industry.

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Abstract

According to the form-out agreement, the investor of the international petroleum agreement (“farmor”), during the implementation of the project and due to various reasons such as the lack of finance resources and/or incapability of contract performance, assigns the provision of required investments for the purpose of performing an upstream oil project and/or certain operations (well drilling) under the upstream contract to other entities (“farmee”). Generally, in case of the fulfillment of the aforementioned affairs by the farmee, the farmor transfers a percentage of its participating interest in the international petroleum agreement to the farmee upon permission from the host country. In line with this, through evaluating the upstream contracts in Iran, as well as the necessities for attracting investments for the purpose of performing such contracts, it is possible to determine the importance of clause concerning the assignment of contract for creating required legal instruments for entering the farm-out agreement in accordance with the rules and regulations. Thus, through concluding a farm-out agreement between the present and the potential investors, emerging difficulties arising out of mere assignment of the contract to the potential investors during the implementation of upstream contracts are prevented.

Keywords: Farm-out agreement, Participating interest, Buy-back contract, Iran Petroleum Contract

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1. Introduction

Sometimes the investors of oil and gas industry which are party to an international petroleum agreement (IPA) want to assign their participating interest to other entities such as third parties. Investors may have economic or technical reasons for any assignment (Duval et al., 2009). One of the instruments

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which is used by the investors to assign their participating interest under an IPA is to enter farm-out agreement. In general, a farm-out agreement is defined as an agreement in which an investor of petroleum project assigns a percentage of its participating interest in exchange of performing some activities such as drilling one or more wells and/or the provision of fund by the assignee for the implementation of the project. In fact, a farm-out agreement is not the mere assignment of the IPA, whether the assignment is a document which is attached to the farm-out agreement and will be effective, once the conditions precedent of the farm-out agreement is satisfied (Cockcroft and Waghorn, 2017).

A party who assigns its participating interest in an IPA is called “farmor”, and a party who earns the participating interest of an IPA in exchange of the fulfillment of its obligations under the farm-out agreement is called “farmee”. By signing a farm-out agreement, a new party enters an IPA and bears its shares of risks and costs during the implementation of the project for which the IPA is signed. Considering the mentioned lines, the possibility of signing farm-out agreements in Iran is so important due to its extraordinary situation (Scott, 1981). Many countries, including America, Canada, and Netherland, use the farm-out agreements in some other petroleum producing countries like Iran; the case is somewhat different and may face some challenges in this regard.

After Islamic revolution of Iran in 1979, two types of upstream contracts were used. At first, according to Article 29 of “The Law of the First Program of Economic, Social, and Cultural Development” which was passed in 1990, buy-back contracts entered Iran’s legal and contractual system and were used for the development of oil and gas fields. After many years of using the mentioned contracts, “Petroleum Contracts Restructuring Committee” was formed in 2013 by the instruction of the Minister of Petroleum in order to review the petroleum contracts and provision of a new upstream contract called Iran Petroleum Contract (IPC). Finally, the “General Conditions, Structure, and Template of Iran Petroleum Contract” was passed by the cabinet in 2014 and was mandated to the Ministry of Petroleum and National Iranian Oil Company in 2014. It is important to mention that the aforesaid resolution was modified several times by the cabinet (Mousavi, 2020). It is worth mentioning that the last version was passed in 2015 by the cabinet.

Nowadays, the main issues hindering or preventing the foreign investment in oil and gas industry in Iran are the economics and the need for technical knowledge. Thus, finding a way to motivate the investors to invest in Iran’s oil and gas industry in order to cover and settle the mentioned problems is so important. On the other hand, according to Iran’s laws and regulations, the internal restrictions such as signing any kind of upstream contract or granting the licenses such as concession make other difficulties to absorb foreign investments in Iran’s oil and gas industry. One way letting us resolving such problems is the mechanisms of using farm-out agreements by the investors of oil and gas industry.

The main question of this work is the following: What are the main challenges of using farm-out agreements in Iran and how can they pave the way for the investors to invest in oil and gas industry?

Due to the lack of Persian sources and references, the authors try to define the legal nature of these agreements and make the structure to absorb minor international oil companies which have special knowledge and/or can provide funds to invest in Iran; thus, the restrictions such as the sanctions imposed on Iran cannot affect them in this regard.

In the first section, we try to define the nature of the farm-out agreements; then, in the next section, we examine the possibility of using farm-out agreement in Iran’s oil and gas industry in accordance with the laws and the capacity of the upstream contracts which are being used in Iran.

2. Farm-out agreement

2.1. The origin of the farm-out agreement and its explanation and analysis

After World War II, farm-out agreements became commonplace in the US in response to increased risks and costs of deeper drilling and a rise in the number of sophisticated smaller oil companies operating in the U.S. Similarly, when smaller, independent oil companies moved abroad to invest in international ventures, these newcomers actively sought farm-outs from the majors that were already there (Duval et al., 2009).

Nowadays, farm-out agreements are legal mechanisms used for the assignment of the participating interest under an IPA. The origins of these kinds of agreements are Canada and U.S. Under farm-out agreements, an international oil company (IOC) which is a party to an IPA assigns part of its participating interest in IPA to another entity often for fundraising and sometimes for the implementation of specific activities such as drilling one or more wells, and the new party is obliged to provide funds or implement specific activities according to the farm-out agreement (Distadio et al., 2018). Sometimes, you may find some farm-out agreements in which the share of participating interest earned by the farmee is less than the share of the cost the farmee is obliged to provide to the farmor. For example, the farmee may be obliged to provide 40% of the costs in exchange of 20% of the participating interest which will be assigned to the farmee after it fulfills its obligations under the farm-out agreement. The reason is that the farmee is entitled for a payment in ratio of its 40% share of the cost which is supposed to be more than its share of costs under the farm-out agreement.

Farm-out agreements are grafted onto an original IPA that sets out the respective rights and obligations of the host country (HC) and the IOC. The farm-out does not constitute a separate form of an IPA. The farm-out agreement introduces a new party to the existing IPA or a change in the participating interest among the existing parties, subject often to the prior approval of the HC. The farm-out agreement is subordinate to and must be coordinated with the IPA. Failure to draft the farm-out instrument so that its terms are consistent with the basic IPA and local legislation may raise serious legal difficulties (Duval et al., 2009).

The investors have the right to sign farm-out agreement in IPAs, and they use the mechanism of the "assignment" clause of the IPA to sign«a farm-out agreement. However, it is obvious that the concept of the mere assignment of the contract is different from assign the contract through signing a farm-out agreement. Through the mere assignment of the contract, the participating interest will be assigned to the assignee once the assignment agreement is signed by the relevant parties[*] and there is no condition precedent to that assignment such as the provision of fund and/or the fulfillment of specific activities. Nevertheless, in principle, according to the farm-out agreements, the participating interest of an IPA will be assigned to the assignee or the farmee when the mentioned party fulfills its obligations according to the farm-out agreements.

2.2. The time for assignment of the participating interest in farm-out agreements

A farm-out is an executory contract. Although many farm-out agreements provide for an up-front or present assignment for tax reasons, the drilling of the test well, the furnishing of geological information at the farmee's sole risk and expense, and compliance with all other terms and provisions of the contract are conditions precedent to the assignment of the participating interest by the farmor. Some contracts may provide that the farmee makes written demand for the assignment within a specified number of

[*] Generally, an assignment agreement is signed among the assignee, the assignor, and the host country, but a farm-out agreement is signed between the farmor and the farmee.

days after it is earned. This is done because a farmee may not want a recordable assignment of the contract it has condemned or proved worthless by the drilling of a dry hole (Gefre, 1958).

The traditional preference of the oil and gas industry is to make an assignment only after the well is earned. A well is earned when it is drilled to the contract depth, the data are received, and the determination is made that the farmee or the operator has fully complied with the terms of the deal. In the present assignment form of farm-out, provision must be made for the reassignment of any rights not earned to the contract depth. The farmor must rely on the good faith of the assignee in furnishing the reassignment. Because of the mentioned reasons, the industry eliminates the need for present assignments, and many oil companies are returning to the subsequent assignment format. Another alternative is to make a present assignment of the agreed upon percentage of interest in all the lands subject to the agreement. If the test well is completed as a well capable of commercial production, the agreement provides that the farmor will assign the remainder of its interest in the drill site (Jones, 2009).

Regarding the present assignment of the participating interest due to the farm-out agreement, it is worth mentioning that sometimes the farmee is a large IOC and due to their bargaining power, they force the farmor to assign all of the participating interest before the fulfillment of their obligations under the farm-out agreement (Brister, 2018).

2.3. Rationale for farm-out agreements

The rationale for entering a farm-out agreement is usually either economic or geological and for sharing the risks. An IOC which is a party to an IPA may have committed its exploration and appraisal capabilities elsewhere or may be short of cash for these tasks. Through a farm-out, the IOC as the farmor can have the operations performed within the terms, conditions, and time limits of its original contractual commitment although at a loss of some of its participating interest. The farmee as the assignee will commit to doing the exploratory or other work. The farm-out agreements are also useful because opinions among geologists may differ; one IOC may want to obtain more information about the prospect, yet it may not rate the prospect sufficiently high enough to justify acts or expenditures of its own. Similarly, an IOC which is participating in operations on a neighboring contract area may desire seismic or other information about the area covered by another IPA because the contract areas lie over a common reservoir. Such an IOC would be interested in becoming a farmee under a farm-out agreement, thereby allowing it to obtain the seismic information and earn an additional interest in the neighboring area (Duval et al., 2009).

2.4. Types of farm-out agreements and their key characteristics

The first characteristic identified is the duty imposed. An option farm-out agreement provides that the farmee must drill the well in order to earn the agreed interest, but there is no penalty other than the loss of the right to earn if it chooses not to drill. On the other hand, an obligation farm-out agreement obligates the farmee to drill the well. If the farmor’s purpose for making the(farm-out is to have an obligation well drilled, it will likely structure the transaction as an obligation farm-out. The transaction may be structured as an option if the farmor is motivated by other purposes. For obvious reasons, potential farmees are likely to prefer to have an option to drill the well, rather than the obligation, and the farmor may have to structure the transaction accordingly in order to encourage the farmee to take the farm-out. In the present environment, except in the case of one-well farm-out, the farmor’s main goals in making the farm-out are likely to be obtaining geological information and/or sharing exploration risks. Therefore, it will seek to obligate the farmee to drill in order to satisfy these goals (Jones, 2009).

The second characteristic identified is the earning factor. A produce-to-earn farm-out agreement provides that the farmee earns an interest in the property if it completes a well capable of producing in paying quantities. Controversy, a drill-to-earn farm-out agreement only requires that the farmee drills to the specified formation and conducts the agreed upon testing in order to earn the interest. If the purpose of the farmor is to drill an obligatory well in order to preserve the lease, the farm-out is likely to be a produce-to-earn agreement. If it is motivated by a desire to explore and/or to obtain geological data, it is more likely to be a drill-to-earn agreement (Lowe, 1987).

The third characteristic identified is the goal of the farmor from entering a farm-out agreement. Usually a farmor enters a farm-out agreement to oblige the farmee to do specific jobs such as drilling one or more wells, and the others may enter such a kind of agreement for fundraising to implement the project. The mentioned fund consists of the farmee's share from the costs expended before the date of the effectiveness of the farm-out agreement and may consist of the share of the future costs which will be expended in the project in the subsequent years (Jones, 2009).

2.5. Farm-outs distinguished from other types of interest

Some transactions do not qualify as farm-outs although they are sometimes mistakenly called by that name. A transaction is a farm-out when the transferee or the farmee acquires a direct and continuing participating in the exploration or development of the contract area. The farmee's objective is to become a co-concessionaire, co-licensee, or co-contractor under an IPA in return for either performance of work, such as drilling one or more wells or the payment of the sum of money used to perform work obligation under an existing IPA (Duval et al., 2009). The following mentions some agreements which are similar to farm-outs.

Some transactions, called farm-out agreements, really represent a transfer through the sale of shares in company to a third party, leading eventually to a change of control in the shareholders of the company having a direct participating interest under an IPA. Today, under many national laws, such a change of control generally requires the approval of the HC as it is considered to be an assignment or transfer of interest from one party to another party unless the transfer is made to an affiliated company (Ibid:307).

An oil company owning a participating interest in a petroleum venture can also create other types of interests which are "called non-participating interests" and are quite distinct from the interests owned by the holders of an IPA, joint operating agreement, or farm-out. For example, the owner of exploration and production rights may need an infusion of cash funds to drill in its contract area. To raise money, this party may sell an "overriding royalty interest" to a third party if this is allowed by the HC legislation. This third party will then receive a cost-free percentage share of the net production. Alternatively, the cash-short owner of the petroleum right may sell to a third party a "net-profit interest" which is a percentage share of the net production profit from a petroleum project. The net profit interest will not return any money to the third party unless the project revenues exceed its cost; nonetheless, the owner of an overriding royalty interests will be paid when production is obtained, regardless of whether the production is yet profitable or not (Ibid:307). The owner of the overriding royalty interest has no risk according to the mentioned explanation and receives its interest when oil and gas is produced from the field. However, the owner of the shares under the net-profit interest shall hope that the hydrocarbon which will be exploited from the field is commercial and at the first stage can cover the costs, and the mentioned party can then receive its interest from the revenues of the oil or gas fields.

"Support agreements", also called "contribution agreements" are often used in the petroleum industry when allowed by the HC law and are similar but not identical to farm-out agreements. Under the support agreement, the owner of a lease or IPA is the party that drills the well rather than farming-out this work to another. A second party will support this drilling effort by providing money. The support agreement can be a "dry-hole agreement" which conditions the payment of funds by the second party on the other party's drilling a dry hole and sharing the information acquired therefrom. The support agreement can also be a "bottom-hole agreement" that conditions the payment of funds on the other party's drilling to a certain depth and testing (Ibid:2009).

2.6. The relations between farm-out agreements and joint operating agreements

Joint operating agreements are the instrument the parties to the IPA specify and share the right and obligation among themselves. In such an agreement, one of the participants which often has the largest share, is selected as the operator and the other participants remain as the non-operator parties whose fundamental obligation is providing funds to implement the project. However, the non-operator parties are the member of the "joint operating committee" and are involved in decision makings regarding the implementation of the project in accordance to their participating interest in the IPA (Duval et al., 2009).

With this introduction, when the farm-out agreement is signed between the investor of the IPA as the farmor and the new investor as the farmee, they shall also enter a joint operating agreement to specify their rights and obligations toward IPA and the HC. If the joint operating agreement existed before signing the farm-out agreement, the mentioned agreement should be modified in accordance with the new investor which is going to be a new investor to the IPA through fulfilling its obligations mentioned in the farm-out agreement. In the model of the joint operating agreement released by the Institution of American Petroleum Negotiators in 2019, the assumption of the authors and the review committee is that the joint operating agreement is signed before the effective date of the farm-out agreement.

2.7. The stages in which a farm-out agreement could be signed

Exploration phase: Most of the farm-out occurs during the exploration phase of a lease area. In the exploration phase, the typical obligations that the farmee agrees to undertake on behalf of the farmor may include seismic survey, its processing and interpretation, and the drilling of exploration wells. Often the farm-out work obligations are linked to the minimum work obligations to be undertaken. The transfer of the interest in the lease is generally affected once the obligations under the farm-out agreement are fulfilled by the farmee (Johnston, 1994).

Appraisal phase: in this phase, a farm-out agreement typically specifies the drilling of appraisal wells. The transfer of the interest in the lease is commonly affected either on the fulfillment of the obligations specified in the farm-out agreement or upon signing the farm-out agreement subject to necessary approvals if any. As soon as the transfer of interest is affected, the farmee can participate fully in any development of a discovery and the decision-making under the joint operating agreement (Johnston, 1994).

Development phase: farm-outs in the development stage are not common. If a farm-out occurs during the development phase, the farmee accepts the total responsibility for the obligations of the farmor and pays the farmor's share of the development costs until a specified point of time. The farm-out agreement may permit the farmee to recover its costs subsequently through taking the farmor's share of petroleum once production starts and through taking a share in profit (Johnston, 1994).

2.8. rrr . ee' obligation under farm-out agreement

While the actual terms of a farm-out agreement can vary greatly, two basic options are possible as consideration for the assignment. The farmee can either agree to pay cash for the assignment or agree to perform and pay all the costs of certain specified work (Duval et al., 2009). After the fulfillment of the obligations by the farmee and the agreed participating interest transferred to him, the farmee is obliged to pay its share of development cost according to the IPA and joint operation agreement.

The farm-out agreement often contains provisions allowing the farmee to earn its interest if it has expended a certain amount of money on the specified work even if the work is not completed, thereby limiting the farmee's risk. If the farmee that is dril ing an obligatory well confronts difficulties which cannot be overcome with sound, cost-effective practices, the drilling operation will nonetheless satisfy its work obligation as long as the farmee's expenditures have totaled the minimum amount. Such a provision also resolves any problems of ascertaining damages for the farmee's failure to perform: the farmee is obligated to pay the sum written in the provision defining the consideration (Duval et al., 2009).

2.9. rrr mrr' obligation under farm-out agreement

Considering the signed farm-out agreement and the model released by AIPN in 2019, we can state that the most important obligations of the farmor, apart from the transfer of the participating interest to the farmee once the farmee fulfills its obligations under the farm-out agreement, is to make specific commitments in the interim period. The interim period in the farm-out agreement commences from the signature date of the farm-out agreement until the effectiveness of the mentioned agreement. In the mentioned period both the farmor and the farmee shall do their obligations as conditions precedent to make the agreement effective. If the parties to the farm-out agreement fail to do the mentioned obligations, the signed agreement shall be considered null and void. It is worth mentioning that upon signing of the agreement just some articles in the agreement usually become effective such as governing law and dispute resolution. The following are the most important obligations the farmor has to commit during the interim period as its major obligations under the farm-out agreement:

- The farmor shall notify the farmee from any meetings held in accordance with the IPA or the joint operation agreement and shall send the agenda of the mentioned meetings to the farmee if necessary.
- The farmor shall, at the earliest moment, notify the farmee from any notices received from the HC in relation to the breach of any obligations under the IPA.

2.10. Host country approval

The rules and regulations of the HC oblige the farmor to receive the approval of the mentioned country to transfer the participating interest in an IPA; hence, the presentation of a farm-out proposal for the HC approval may open the door for the renegotiation of the original IPA agreed and signed between the HC and the farmor. Often, in practice, the HC does not review the farm-out agreement, but the HC must consider and approve the subsequent assignment of the interest earned by the farmee for the actual transfer of the interests to make it effective. The parties bear the risk that the HC may object to the assignment when its approval is later requested (Duval et al., 2009).

Usually, the host countries mentioned the fulfillment of minimum work obligation by the farmor as a condition precedent to any assignment of the contract such as entering the farm-out agreement. In other words, until the IOC does not perform the minimum work obligations mentioned in an IPA, it cannot sign any farm-out agreement and transfer its shares of participating interest to any third parties. For example, the standard Norwegian license addresses the mentioned issue by declaring that "A party has no right to carry out an assignment until the obligatory work program has been carried out" (Abayomi, 2013).

2.11. Termination of farm-out agreement

If the farmor and the farmee fail to perform their obligations in the durations specified in the agreement, the respective party may be in the breach of the agreement. The farmee is in default if it fails to timely complete the specified work. Unless the agreement provides otherwise, upon default, the farmee shall owe the amount of money due and pay interest on this sum. In addition, the farmor usually has the option to require the farmee to reassign the farmee's interest to the farmor. The reassignment may be free of cost to the farmor although the parties may agree to reimburse the farmee for certain expenses (Farmout Agreements Guidance Notes, 2019).

Most farm-out agreements contain this principle that if the farmee fails to provide required and agreed investment under the farm-out agreement, the commencement of drilling, testing, abandonment, and completion, then the farmor has the right to terminate the farm-out agreement and any rights due to the mentioned agreement shall be deemed to be null and void without any rights to recover the costs by the farmor (Farmout Agreements Guidance Notes, 2019).

In addition, if during the interim period, the condition precedent to the farm-out agreement is not fulfilled by either party, any of the parties has the right to terminate the farm-out agreement. Moreover, if the farmee is not a defaulting party and bears any damages due to the termination of the contract, the farmor shall compensate the farmee for it (Farmout Agreements Guidance Notes, 2019).

3. Analyzing possibility of using farm-out agreements based on Irnnss upstream contracts and relating challenges (buy-back contracts and Iran petroleum contract)

In buy-back contracts, the contractor undertakes to implement a project through designing and engineering; supplying machinery, materials, technology, and technical knowledge; and implementing construction operations. In return, it agrees to buy back the products from the project to reimburse its expenses and remuneration from the project. The reason for naming these contracts buy-backs is that the contractor is reimbursed its expenses and remuneration from the revenues generated from specified oil and gas fields on which it implements the development operations (Shiravi, 2014). Such contracts are used in countries in the petroleum industry of which foreign investment and private ownership are forbidden (Adyani, 2021).

Given that, the mechanisms for assignment in underlying upstream petroleum contracts and the mentioned clause to sign farm-out agreements are stipulated in Iran's upstream petroleum contracts. On the other hand, signing farm-out agreements by investors which are party to upstream petroleum contracts is not forbidden according to Iran's rules and regulations. Thus, it can be stated that signing this kind of agreement and assigning part of contractors' participating interest according to Iran's upstream petroleum contracts are allowed. However, it should be mentioned that signing this kind of agreement may face some challenges mentioned below.

The investors assign their participating interest according to the farm-out agreement in two ways to receive the National Iranian Oil Company approval for the assignment of upstream petroleum contracts to third parties such as farmees in farm-out agreements. First, the contractor assigns their participating interest when the farm-out agreement is signed, that is, the present assignment, which rarely happens. The other way is to assign the participating interest when the farmee fulfills its obligations according to the farm-out agreement. Therefore, obtaining the approval from HC is needed when the farmee fulfills its obligations according to the farm-out agreement, and the participating interest of the upstream petroleum contract is assigned. This way also has its risks for the farmee despite of using the mentioned way in host countries. The risk is that the HC may not give permission to its investors to assign its participating interest despite of the fulfillment of the obligations by the farmee according to the farm-out agreement, and the reimbursement of the expenses of the farmee may face difficulties.

As stated above, the farmor may be obliged to obtain the necessary approvals and permissions from the HC during the interim period to prevent such happenings. One of these permissions and approvals is obtaining the HC consent and approval for assigning the participating interest of the upstream petroleum contract when the farmee fulfills its obligations. Also, if the farmor fails to do so, the farmee may then terminate the farm-out agreement or the farm-out agreement may be considered null and void; if the farmee bears any cost until the termination date of the farm-out agreement, the farmor may be obliged to compensate such costs. Such a way can be used by the investors of the Iranian oil and gas fields, and they can take any necessary arrangements in the farm-out agreement to oblige the farmor to receive the necessary permissions and approvals from National Iranian Oil Company. Therefore, when the farmee fulfills its obligations under the farm-out agreement, the farmor (the contractor in Iranian upstream petroleum contracts) can assign its participating interest to the farmee. If the farmor fails to do so, the farmee has the right to terminate the farm-out agreement which is just signed but has not become effective.

It is obvious that when National Iranian Oil Company wants to issue such approvals, it may evaluate the companies according to its evaluation criteria. Mentioned evaluation may be conducted with attention to the technical and financial capabilities of the companies which intend to be the farmee (and finally the contractor party to the upstream contract). Thereafter, National Iranian Oil Company decides to grant the right of the assignment of the contract to the farmees when they fulfill their obligations under the farm-out agreement. Therefore, the approval of National Iranian Oil Company for the assignment of the contract by the contractor (the farmor) is issued when the farm-out contract is just signed but has not become effective. Hereby, National Iranian Oil Company consents to assign the contract to the farmee when the obligations are done under the farm-out agreement.

In the evaluations of NIOC, the justifications of the contractor to sign the farm-out agreements will be considered, and NIOC may require the contractor to provide the draft of the farm-out agreement in this regard. For example, the contractor may provide the problems of fundraising and/or technical issues as a reason for assigning the contract to a new entity through the farm-out agreement.

Merely assigning the contractor to a new entity by the contractor in the duration of the implementation of the contract will not solve the fundraising or any other problems in the Iranian upstream contracts and may cause NIOC to face the contractors (the comprising assignee and assignor) which are not able to implement their obligations according to the upstream contract such as the provision of fund.

We cannot find any record about signing farm-out agreements by contractors entering contract with NIOC during past years. The assignor and assignee will enter an assignment agreement after obtaining the required approval from NIOC and regulate their rights and duties through joint operating agreements in any upstream contracts. The mentioned mechanisms are not useful for solving the problems stated above because the subject of signing any joint operation agreement is to assign the contract to the assignee, and the problems of the failure of the new contractor to fulfill its obligations according to the contract (such as fundraising) may arise again. On the other hand, it is regularly mentioned in the joint operating agreements that if one of the contractors fails to fulfill its obligations according to the development contract, the mentioned contractor will lose its voting rights in the operating committees and will not enjoy from any interests resulted from the implementation of the contract. However, it is worth mentioning that despite the mentioned penalties imposed on the defaulting contractor party, the mentioned entity is again a party to the upstream contract, and the mentioned penalties will not solve any problem such as fundraising during the implementation of upstream contracts. As mentioned above, the reason for joining any new entity to the contract as a contractor is to help the previous contractor in any manner such as economic issues. Then, if our goal is to make the assignee fulfill its obligations before any assignment of the participating interest, signing the farm-out agreement is the contractual tool to reach it.

4. Conclusions

The farm-out agreements appeared in the USA and Canada, were used in oil and gas industry, and spread through the whole world. Investors of oil and gas fields assign specific jobs or fundraising to the assignee in exchange of assigning parts of their participating interest in the upstream contracts. The mentioned investors (the farmors) try to fundraise and obtain technical knowledge by signing farm-out agreements with new contractors (the farmees). On the other hand, they share their risks in upstream contracts. Signing any farm-out agreements will not make any new upstream contract, but according to the mentioned agreement, it just lets a new entity to join the upstream contract. After signing any farm-out agreement between the parties, they shall enter a new agreement which is a joint operating agreement to regulate their rights and obligations toward the IPA. If the mentioned agreement existed before the farm-out agreement, it should be modified according to the entrance of the new contractor to the IPA. Signing any farm-out agreement may be regulated in any HC; in most HCs, if any contractor or investor wants to sign any farm-out agreement, it shall receive the approval of the HC in this regard in the first stage. Despite the possibility of the assignment of the contract by the contractor in the Iranian upstream contracts (both buy-backs and IPC), we cannot find any record showing the conclusion of a farm-out agreement by the mentioned contractors to assign their rights and obligations to a new entity as a farmee. The mere assignment of the upstream contract will not solve the problems such as fundraising in Iran since the new contractor may fail to fulfill its obligations according to the upstream contract and the joint operating agreement after the upstream contract is assigned to it, and the participating interest of the mentioned contract is earned. Now days, this kind of assignment of the contract is not used in host countries, and the investors transfer their participating interest under the IPAs when the assignee fulfills its obligations or most of its obligations under the IPAs. Considering the mentioned issue is so important for the host countries with problems in attracting investors to invest on their oil and gas industry to prevent them from facing many investors which cannot fulfill their obligations under IPAs. Then, considering the fact that signing this kind of agreement is not forbidden in Iran paves the way for contractors and investors of the mentioned country to use farm-out agreements when they intend to assign their participating interest under upstream contracts. Finally, it is worth noting that employing this type of contracts by the investors of Iran's oil and gas fields requires the creation of the necessary structure and mental preparation in the National Iranian Oil Company.

Nomenclature

HC	Host country
IOC	International oil company
IPA	International Petroleum Agreements
IPC	Iran Petroleum Contract
NIOC	National Iranian Oil Company

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