

An Overview of the Federal Oil and Gas Draft Law

Jawad Khalaf - Partner, Head of Litigation - Iraq - Litigation / Construction and Infrastructure
j.khalaf@tamimi.com - Baghdad

This law applies to petroleum operations on dry land as well as inland water, territorial water and beneath the water in all parts of the Republic of Iraq. According to Article 4, it is also applicable to areas that are 'subject to the Iraqi Law as per an agreement, international law, or international norms'.

By implementing this Law, the Ministry aims to lay out regulations that will allow them to gain control of the oil and gas, ensuring fair distribution to the people, as well as set strategic policies to 'regulate and develop the upstream oil and gas industry to achieve the highest benefit to the Iraqi people'. Additionally, the Law states that it aims to ensure the development of the private sector in a way which will make it 'efficient, qualified and capable' of contributing significantly in the production of petroleum worldwide.

In order to achieve the aims outlined in Article 2 of the law, the Ministry provides a number of strategies in Article 3. These include 'establishing a new and advanced system for managing petroleum operations in Iraq, including setting long, medium, and short term strategies, policies and plans', exchanging oil and gas experiences with the international oil and gas industries and establishing the Federal Council of Oil and Gas (the "FCOG"), created by Article 5 of the Law.

Article 6 of the Law outlines the entities that are responsible for managing the petroleum resources. These entities are the House of Representatives, the Council of Ministers, the Federal Oil and Gas Council, the Ministry of Oil, the Iraq National Oil Company and the Regional Body. Articles 7-14 outline the duties of each entity and the roles that they are responsible for. For example, Article 9 states the duties and functions of the FCOG. According to Article 9(h), the FCOG shall be responsible to set the national level for the production of petroleum in accordance with the national policy. Furthermore, Article 9(a) states that the FCOG shall 'approve federal petroleum industry policies, exploration and fields development plans, and main pipelines plans, and amendments thereof'. It has been argued by some industry experts that it cannot fulfill such obligations, since the FCOG does not have the legal authority or institutional representation to do this.

In addition to stating the obligations of the entities responsible for managing the petroleum production, the Law also includes the criteria to be incorporated into model contracts for Petroleum Operations. For example, Article 16 states that said model contracts should include criteria such as 'Iraq's ownership of petroleum resources', the obligations of the contracting parties and the consequences of breaching such a contract. It also includes some 'reasonable incentives' given to the investors to ensure they get the best possible results in terms of the transfer of technology, the extraction of the petroleum and the training and development of Iraqi staff working in the oil and gas industry. However, the Law does not clearly state the type of contracts Article 16 is applicable to.

Part III of the Law deals with the exploration, development and production of petroleum in Iraq. It is specified in Article 21 that a contract made for the exploration, production and development of petroleum gives the contracting party the exclusive right to perform the aforementioned for an initial period of not more than four years. It continues, the body carrying out the exploration may be granted an additional period not exceeding two years, in the case of discovery if they need the time to evaluate and determine the commercial value of the discovery. An additional period not exceeding four years in the case of the discovery of a non-associated natural gas and a period not exceeding two years to complete the evaluation of the discovered undeveloped fields. Additionally, Articles 22, 23 and 24 outline the obligations held by the license holder and the criteria by which they should comply in relation to their work

with the exploration, development and production of petroleum.

When it comes to the financial aspect of the oil and gas industry in Iraq, Part VI of the Law provides some guidelines. While Article 40 deals with the returns and revenues made due to the sale of oil and gas, Articles 41 and 42 outline the financial obligations of both the license holders and the contracting companies. In reference to Article 40, the Law provides that all returns made due to the sale of oil and gas as well as the bonuses received from the oil contracts made with Iraqi or foreign companies to be distributed fairly among the people as regulated by the Law. The Article further provides that a fund by the name of Future Fund is to be established and states that a percentage of the excess revenues to be deposited into the fund in order to ensure the future of future generations. However, this may not be possible as some argue that according to Articles 106 and 112 of the Iraqi constitution this Article does not fit in this Law, as a Law for sharing revenues already exists.

Article 45 of the Law states that any conflicts arising from the interpretation and application of this Law should be resolved by negotiations between the parties and 'as per the principle of good faith'. Further, if in the case where the negotiations fail to resolve the conflict between the parties, the matter shall be referred to the Minister for resolution, failing that then referred to arbitration.

Even though the Federal Oil and Gas Draft Law rounds out an all-inclusive system aimed at achieving the highest level of growth in the reserves and production of Petroleum in Iraq, the passing of the Law has been repeatedly delayed due to disagreements between some of the country's MP's. As a result, some parliamentarian members walked out during the submission of the draft to parliament.