

THE OIL AND GAS
LAW REVIEW

NINTH EDITION

Editor
Christopher B Strong

THE LAWREVIEWS

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PREFACE

International oil and gas law is a fascinating field, sitting at an intersection of law, politics and business. Practitioners in this field must be familiar not only with international norms and practices but also with local legal and regulatory requirements, which can vary substantially from jurisdiction to jurisdiction. The task can be daunting, especially in the context of fast-paced transactions or urgent legal or operational issues.

The Oil and Gas Law Review is intended to serve as a starting point for practitioners in gaining an understanding of the key legal requirements in the jurisdictions in which they may be advising clients on transactional and operational matters. The thinking behind the subtopics it covers has been to try to answer those questions that come up most frequently when dealing with a new or unfamiliar jurisdiction. Although not a substitute for detailed local law advice, the hope is that it will nevertheless serve as a reference guide and point users in the right direction when considering local legal issues.

I would like to thank the many experts who contributed to this volume. Without their substantial efforts, a work such as this would not be possible. Thanks also to the editors and publishers of *The Oil and Gas Law Review* for having the vision to publish a volume such as this and for their efforts in making it such a success.

Christopher B Strong

Vinson & Elkins LLP

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IRAQI KURDISTAN

Florian Amereller and Dahlia Zamel¹

I INTRODUCTION

The Republic of Iraq, including the Kurdistan Region of Iraq (KRI), is a country vested with many easily exploitable oilfields. The exploration and production of oil in Iraq started as early as the 1920s. The Iraqi oil sector was fully nationalised by the central Iraqi government in 1975.

The Kurdistan Region Ministry of Natural Resources (MNR) estimates the KRI's reserves at 45 billion barrels of oil and at 25 trillion cubic feet (tcf) of proven gas reserves and up to 198 tcf of largely unproven gas. If the KRI were an independent country, the amount of oil and gas reserves would place it among the top 10 oil-rich countries in the world. However, the region is still an integral part of the Republic of Iraq even though it enjoys semi-autonomy. According to the MNR report, the KRI's total exported and consumed oil for 2020 stood at 165,942,861 barrels, about five million barrels less than 2019, and the average price of oil dropped to \$28.1 per barrel as global markets crashed following the global outbreak of covid-19 with the gross value of crude oil sold via pipelines standing at \$4,443,842,235.

Up until the coming into force of the current Iraqi Constitution of Iraq in 2006, the KRI played no active role in the development or utilisation of the substantial oil and gas reserves in the KRI. Since then, the Kurdistan regional government (KRG) concluded more than 50 production-sharing contracts (PSCs) with international oil companies (IOCs). Initially, the contracting partners were minor oil companies such as Gulf Keystone, Genel and Western Zagros. Gulf Keystone discovered the giant Shaikhan field with 14 billion barrels of oil in place (subsequently adjusted downwards). It was one of the world's largest onshore discoveries in more than 20 years. In 2012, ExxonMobil pioneered as the first major IOC, followed by Chevron, Total and Gazprom.

Given certain constitutional ambiguities regarding the management of oil and gas in Iraq, the KRG and the central government in Baghdad are constantly at odds over the authority to administer and dispose of oil being produced in the KRI. In the course of these quarrels, the central government has repeatedly withheld the payments of federal budget portions allocated to the KRI. In turn, the KRG continued and expanded its independent oil exports, which have continued to thrive, with several producing fields, including Taq Taq, Tawke, Peshkibir and Atrush under its control.

¹ Florian Amereller is a partner at Amereller Legal Consultants and Dahlia Zamel is a senior associate at Mena Associates in association with Amereller Legal Consultants.

To date, Baghdad and the KRI remain at odds over the regions' oil reserves and the rights of the KRI to export crude oil independently of Baghdad and SOMO, the Iraqi oil marketing organisation.

II LEGAL AND REGULATORY FRAMEWORK

Iraq's legal framework for the petroleum industry is quite ambiguous. Pursuant to the Iraqi Constitution, 'oil and gas are owned by all the people of Iraq in all the regions and governorates'.² However, the exploration and production of oil and gas are not governed by the Iraqi Constitution. It only states that 'the central government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country . . . and this shall be regulated by a law'.³

The Iraqi Constitution only refers to 'present fields' where the management of present fields falls under the shared jurisdiction, while the management of other oil and gas resources that are not 'present fields' are not expressly addressed in the Constitution. Nonetheless, the term 'present fields' does not reflect common concepts of the oil industry such as 'proven – probable – possible', 'developed – undeveloped' or 'producing – non-producing'. That said, the KRG maintains that present fields within the meaning of the Iraqi Constitution refers only to the oil and gas fields that were producing at the time of enactment of the Iraqi Constitution in 2005. All other oil and gas resources (i.e., fields not producing or even not discovered in 2005) are not encompassed. The KRG takes the position that non-producing fields (as of August 2005) do not fall within the shared jurisdiction of the central government and the KRG, and, therefore, the KRG has exclusive jurisdiction over such fields. Hence, the KRG regards itself as the competent authority to regulate all oil and gas resources in the Kurdistan region other than 'present fields'. The central government in Baghdad rebuts this interpretation of the Iraqi Constitution and believes that the KRG lacks the requisite constitutional authority to sign contracts with foreign oil companies, which it deems illegal.

Pursuant to Article 112(1) of the Constitution, the foregoing varying interpretations should have been regulated by a law creating a comprehensive and fair framework for the management of the Iraqi oil and gas sector, including the rights and competencies of the governorates and regions to have an active role in the management and a share of the revenues. For years, the KRG and the central government failed to agree on a unified federal oil and gas law in implementation of the Iraqi Constitution. Finally, in 2018, a new Iraqi National Oil Company Law No. 4/2018 (the INOC Law) was passed by the Iraqi parliament and came into force in April 2018. While the INOC Law contains some provisions that appear to implement some of the requirements of the Constitution and to liberate the oil and gas sector, the INOC Law is far from a federal oil and gas law as envisioned by the Constitution as it does not address in any detail the management and cooperation between the central government and the KRG with respect to oil and gas from present or future fields. The INOC Law was immediately challenged on the basis of the constitutionality of some of its provisions. In January 2019, the Federal Supreme Court found that a number of the INOC

2 Article 111, Iraqi Constitution.

3 Article 112(1), Iraqi Constitution.

Law provisions were unconstitutional, effectively rendering the INOC Law impossible to implement without first amending or replacing the unconstitutional Articles, which has not happened to date. An amendment of the INOC law remains under review by Parliament.

i Domestic oil and gas legislation

The Iraqi Constitution gives the regions the right to legislate on any matters that do not fall within the exclusive jurisdiction of the central government⁴ and, pursuant to the Kurdistan National Council (the predecessor to the current Kurdistan parliament) Decision No. 11/1992, federal laws passed after 1992 are not applicable in the KRI unless specifically adopted pursuant to a KRI law. The Constitution further provides that where a conflict exists between a federal law and a regional law, the regional law shall prevail.⁵

Premised on the foregoing, in 2007 the KRI legislator passed its own Kurdistan Oil and Gas Law – No. 22/2007 (KOGI). The KOGI applies to all petroleum operations in the KRI. No federal legislation and no agreement, contract, memorandum of understanding or other federal instrument that relates to petroleum operations applies in the KRI except with the express agreement of the relevant authority of the KRG.⁶ Hence, the federal Iraqi legislation and regulations with respect to petroleum operations are not applied in the KRI.

In April 2013, the KRI adopted the ‘Law of Identifying and Obtaining Financial Dues to the Kurdistan Region – Iraq from Federal Revenue’ (the Financial Rights Law). The Financial Rights Law grants the KRG the right to independently export crude oil produced in the KRI if the central government fails to pay the KRG its share of revenues (including oil revenues), budget items, other national allocations and reparations.

ii Regulation

The regulatory agencies competent for overseeing upstream oil and gas activities in the Kurdistan region are:

- a* the Iraqi Kurdistan parliament: the Kurdistan parliament is the legislative body of the KRI and passes its laws;
- b* the KRG: the KRG governs the KRI in accordance with the laws enacted by the Kurdistan parliament;
- c* the Regional Council: the Regional Council consists of the Prime Minister, the Deputy Prime Minister, the Minister of Natural Resources, the Minister of Finance and Economy and the Planning Minister;⁷ it mainly formulates the general principles of petroleum policy, prospect planning and field development and approves petroleum contracts;⁸ and
- d* the Ministry of Natural Resources of the Kurdistan Region: the MNR oversees and regulates all petroleum operations in the KRI⁹ and it negotiates and signs PSCs on behalf of the KRG jointly with the Prime Minister representing the Regional Council. The Minister of Natural Resources may license petroleum operations (i.e., activities including prospecting, exploration for, development, production, marketing, transportation,

4 Article 115, Iraqi Constitution.

5 Article 121(2), Iraqi Constitution.

6 Article 2, KOGI.

7 Article 4, KOGI.

8 Article 24(1), KOGI.

9 Article 6(1), KOGI.

refining, storage, sale or export of petroleum; or construction, installation or operation of any structures, facilities or installations for the transportation, refining, storage, and export of petroleum, or decommissioning or removal of any such structure, facility or installation)¹⁰ to third parties¹¹ after approval of the Regional Council for the Oil and Gas Affairs of the Kurdistan Region – Iraq (the Regional Council). The MNR shall encourage public and private sector investment in petroleum operations.¹²

Other agencies and ministries such as the Social Security Directorate, the Residency Directorate and the Ministry of Agriculture and Water and Irrigation have regulatory oversight for their areas of competence that fall within the activities of IOCs operating in the KRI.

iii Treaties

Pursuant to the Iraqi Constitution, the central government in Baghdad has the sole authority to sign and ratify international treaties and agreements.¹³

Iraq has signed several bilateral investment agreements; however, only a very limited few have entered into force – France, Japan and Kuwait – all others are pending ratification by the Iraqi Council of Representatives.

In addition, Iraq has entered into bilateral free trade agreements with Algeria, Egypt, Jordan, Lebanon, Oman, Qatar, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen.

On 11 July 2005, Iraq and the United States penned a Trade and Investment Framework Agreement. The Iraqi government ratified the agreement in December 2012. The aim of this agreement is to promote and facilitate investment and trade between the two countries. At present, the United States does not have a bilateral investment treaty with Iraq.

With regard to judicial cooperation and dispute resolution, Iraq, including the KRI, is a signatory state of the Riyadh Arab Agreement for Judicial Cooperation of 1983 (the Riyadh Convention). According to the Riyadh Convention, each contracting party shall recognise the judgments made by the courts of any other contracting party in civil cases having the force of *res judicata* and shall enforce them in its territory.¹⁴ Nonetheless, judgments made against the government or against any of its employees in respect of acts undertaken in the course of duty or exclusively on account thereof are exempted.¹⁵ The same applies to awards of arbitrators.¹⁶

The ICSID Convention entered into force in Iraq on 17 December 2015.

The Iraqi Cabinet in 2018 had voted to approve Iraq's accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (NY Convention). However, Iraq's accession to the NY Convention only came into force for Iraq when the Iraqi Parliament officially passed the Iraqi Law on Ratifying the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, which was published in the Official Gazette on 31 May 2021. According to the ratification law, the NY Convention

10 Article 1 No. 18, KOGL.

11 Article 3(4), KOGL.

12 Article 9(1), KOGL.

13 Article 107(1), Iraqi Constitution.

14 Article 25(b), Riyadh Convention.

15 Article 25(c), Riyadh Convention.

16 Article 37, Riyadh Convention.

will not apply in Iraq retroactively to awards issued prior to its coming into force, will only apply with regards to other member states on the basis of reciprocity and will only apply to awards issued in commercial matters.

III LICENSING

To date, the KRG has signed more than 50 PSCs with IOCs. Not only does the region offer security and stability (and remarkably continues to, post-ISIS and the subsequent economic crisis), the terms and conditions of the PSCs are more favourable to private investors than the technical services contracts (TSCs) and development and production services contracts (DPSCs) signed by the Federal Iraqi Ministry of Oil.

The MNR has the discretion over whether to invite applicants for licensing or to award licences based on direct negotiation.¹⁷ In all cases, an applicant or invitee must demonstrate technical and financial capability. It also needs to have a record of compliance with the principles of good corporate citizenship, and a commitment to the Ten Principles of the United Nations Global Compact.¹⁸

Key features of the PSC are to be negotiated with the MNR based on the Model PSC published by the KRG,¹⁹ which includes that:

- a* a signature bonus²⁰ and a capacity-building bonus²¹ are payable by the contractor once the PSC becomes effective;
- b* the KRG has the right to participate in the PSC through one of its public companies with a stake of up to 25 per cent after commercial discovery.²² The contracting partner is usually a consortium consisting of an IOC and a carried Kurdish national company with an undivided interest of between 20 and 25 per cent in the PSC. The Kurdish public company may, at its discretion, assign part or all of its government interest to a third party;²³
- c* the term of the PSC varies in accordance with advancement. The exploration period lasts for five years (comprising an initial sub-period of three years and a second sub-period of two years) and may be extended for a further two years.²⁴ Upon commercial discovery, the development period extends to 20 years with two possible extension periods of five years each;²⁵
- d* preference is to be given by the IOC to local employment,²⁶ subcontractors²⁷ and materials;

17 Article 26, KOGI.

18 Article 24, KOGI.

19 The Model PSC is at https://ens.dk/sites/ens.dk/files/OlieGas/ressourcer_og_prognose_2021_dk.pdf.

20 Article 32.1, Model PSC.

21 Article 32.2, Model PSC.

22 Article 4.1, Model PSC.

23 Article 4.3, Model PSC.

24 Article 6.2, Model PSC.

25 Articles 6.10 and 6.12, Model PSC.

26 Article 23.1, Model PSC.

27 Article 22.2, Model PSC.

- e* capacity building of local employment including training, funding, education and secondment of government employees is required. All reasonable training costs for Iraqi personnel are recoverable petroleum costs;²⁸
- f* during the exploration period, an annual surface rent of US\$10 per square kilometre is payable. However, this exploration rental is, as it constitutes petroleum costs, recoverable.²⁹
- g* twenty-five per cent of the initial contract area, excluding production areas, shall be relinquished at the end of the initial term next to an additional 25 per cent of the remaining contract area, excluding production areas, at the end of each extension period;³⁰
- h* in the event of a commercial discovery, a production bonus is payable³¹ in addition to a recurring royalty (i.e., a portion of petroleum produced).³² Usually, the royalty rate for export crude oil and natural gas is set at 10 per cent;
- i* once commercial production commences, the contractor is entitled to recover all petroleum costs (e.g., production costs, exploration costs, development costs and decommissioning costs) incurred from the hydrocarbons produced.³³ The remaining 'profit petroleum' is split between the KRG (through its public company) and the contractor pursuant to the quotas stipulated in the PSC;³⁴ and
- j* during the exploration period, the contractor may terminate the PSC at the end of each contract year.³⁵ Once the development period has been entered into, the contractor has the right to terminate the PSC at any time.³⁶

Unlike the TSCs and DPSCs offered by the central Iraqi Ministry of Oil, the PSC provides the contractor with a share in the petroleum discovered and, therefore, an interest in the value of the petroleum produced.

IV PRODUCTION RESTRICTIONS

At present, the MNR does not impose any restrictions on the exploration, development and production of hydrocarbons (cost and profit oil) in the KRI. As per the PSC, the contractor shall be entitled to receive and export freely any available petroleum (cost and profit oil) to which it is entitled under the agreement.

Through the PSC, the KRG reserves oil for local markets. Upon written request of the MNR, any amounts of crude oil produced that the KRG deems necessary to meet the KRI's internal consumption requirements must be sold and transferred to the KRG at the international market price. All contractors active in the KRI must be treated equally in this regard.³⁷

28 Article 23.7, Model PSC.

29 Article 6.3, Model PSC.

30 Article 7.1, Model PSC.

31 Articles 32.3 and 32.4, Model PSC.

32 Article 24.1, Model PSC.

33 Articles 25.3 and 25.4, Model PSC.

34 Article 26, Model PSC.

35 Articles 45.3 and 7.4, Model PSC.

36 Article 45.4, Model PSC.

37 Article 16.15, Model PSC.

With the Financial Rights Law, the KRI lawmaker has again confirmed the right to export crude oil independently of the central government if and to the extent the latter fails to pay the KRG its share of oil revenues and exploration costs.

The central government in Baghdad strongly objects to all such efforts by the KRI to explore and produce crude oil independently of the Federal Ministry of Oil in Baghdad.

Moreover, there are still severe practical limitations on the export of oil produced in the KRI. Although the pipeline capacity has been greatly increased and should nominally be sufficient to transport the current production output, a steady flow of export oil is not guaranteed, as the pipelines are often subject to sabotage or illegal drainage.

As part of Iraq, the KRI has committed to comply with its share of Organization of the Petroleum Exporting Countries (OPEC) cuts of Iraqi productions quotas. In 2020, the KRG agreed to reduce production as part of Iraq's OPEC obligations.

V ASSIGNMENTS OF INTERESTS

The KOGL provides that the relevant contract relating to petroleum operations shall specify the rights of the MNR to approve or be notified of any assignment (in any form, whether by transfer, conveyance novation, merger, etc.) and changes in control of any contracting entity.³⁸

In practice and based on the Model PSC published by the MNR, PSCs normally give the KRG the right to approve any assignment, whether to an affiliate, another contracting entity or to a third party. In the case of a transfer or assignment to a third party, however, the contractor must present reasonable evidence of the assignee's technical and financial capability.³⁹ This requirement is not applicable to an assignment to an affiliate or to another contracting entity.

Neither the KOGL nor the Model PSC provides for a right of first refusal or any other pre-emptive rights of the KRG.

Prior consent of the KRG is required for a change of control to a third party that, according to the Model PSC, applies to any direct or indirect change of control of a contracting entity, in which the market value of such entity's participating interest in this contract represents more than 75 per cent of the aggregate market value of the assets of such entity and its affiliates that are subject to the change in control.⁴⁰

The Model PSC provides that any assignment or change of control 'will not give rise to any tax, imposition or payment whatsoever in the Kurdistan Region, whether currently existing or which may become applicable in future'.⁴¹

The Model PSC provides that an assignee must enter into an agreement whereby the assignee undertakes to be bound by the terms of the PSC in the then-current form.

38 Article 30, KOGL.

39 Article 39.2, Model PSC.

40 Article 39.6, Model PSC.

41 Articles 39.4 and 39.6, Model PSC.

VI TAX⁴²

According to the KOGL, all persons associated with ‘petroleum operations’ are liable for all applicable taxes of the KRG, including: (1) surface tax; (2) personal income tax; (3) corporate income tax; (4) customs duties and other similar taxes; (5) windfall profits or additional profits tax; and (6) any other tax, levy or charge expressly included in its petroleum contract.⁴³

Based on the above, upstream oil and gas operations would be subject to the tax laws and regulations applicable to all commercial activities in the KRI, in particular the Income Tax Law No. 113/1982 (KRG ITL).⁴⁴ According to the KRG ITL, all commercial activities are subject to a flat corporate income tax rate of 15 per cent on profits.

The current KOGL does not contain any tax exemption for IOCs and other upstream operators active in the KRI. It does, however, provide that a petroleum contract may exempt a contractor from tax by law. No such law has been enacted to date.

In the absence of a KRI oil and gas tax law and as an incentive for major IOCs to invest in the KRI, the Model PSC is structured to provide the IOCs, their affiliates and subcontractors involved in petroleum operations with a *de facto* tax exemption. In this regard, Articles 31.1 and 31.2 of the Model PSC provide for several rights and obligations related to taxes in connection with the PSC.

On the one hand, the Model PSC purports to exempt contractor entities from all taxes including but not limited to capital gains tax, customs and imports duties other than corporate income tax. On the other hand, the Model PSC also provides that, upon submission of appropriate tax returns by the contractor entity, the government shall pay all income tax on behalf of the contracting entity directly to the KRG tax authorities from the government’s share of profit petroleum. In addition, the government shall indemnify the contractor entity against any liability to pay any taxes assessed or imposed upon such contracting entity that relate to the tax exemptions granted by the PSC.⁴⁵

According to the Iraqi Constitution, no tax may be imposed nor an exemption made except pursuant to a law.⁴⁶ Therefore, in our assessment the exemption provided under the PSC may not legally bind the KRI tax authorities; a view widely shared by the Ministry of Finance.

With regard to social security contributions and personal income tax of the contractor entity employees, the IOC is obliged to withhold and pay personal income tax and social security contributions on behalf of its employees pursuant to applicable law. Foreign employees, however, were exempt from personal income tax until a recent decision by the Ministry of Finance in January of 2021, which states that all expatriate employees of oil and gas companies in the KRI are subject to payments of personal income tax.

42 There is considerable controversy as regards the KRG’s constitutional right to legislate on matters relating to taxation. According to Article 110(3) of the Iraqi Constitution, ‘formulating fiscal policy’ falls within the exclusive jurisdiction of the federal government. The KRG’s interpretation of this article distinguished between ‘formulating policy’ and ‘regulating taxes’ where the latter falls within the competencies of the regional government. In practice, this question has not been subject to judicial review and the federal government has not imposed nor collected any taxes in the KRI since 1992.

43 Article 40, KOGL.

44 Adopted and amended in Kurdistan pursuant to the KRG Law No. 26/2007 as amended from time to time.

45 Article 31.1, Model PSC.

46 Article 28(1), Iraqi Constitution.

VII ENVIRONMENTAL IMPACT AND DECOMMISSIONING

Both the KOGL and the Model PSC contain similar provisions pertaining to health, safety and environment. In addition to the requirement for all applicants for a PSC to include conditions for protecting the environment, preventing, minimising and remedying pollution, an IOC is required under the PSC to adhere to prudent international petroleum industry practice with regard to environmental protection as well as applicable laws.⁴⁷ IOCs are also required to make payments towards an Environment Fund.⁴⁸ In July 2021, the MNR issued a decree obliging all IOCs operating in the KRI to cease all gas flaring in the region.

The KRG Law of Environmental Protection and Improvement No. 8/2008 regulates environmental matters such as the protection of water, soil, air and biodiversity, and is applicable to oil and gas operations. In accordance with Articles 4 to 6 of the law, the Ministry of Environment in the KRI established an Environmental Protection and Improvement Council to oversee and supervise all environmental matters. In 2010, an independent Environmental Protection and Improvement Board was established in the KRI by Law No. 3/2010, which replaced the Environmental Protection and Improvement Council and the Ministry of Environment and has assumed the oversight and supervisory role for the enforcement of Law No. 8/2008.

In addition to specific obligations related to standards for the protection of water, soil, air and biodiversity, any person conducting any activity that has an environmental impact must obtain prior approval from the Environmental Protection and Improvement Board.

Non-compliance with the obligations of the Environment Law may result in no less than one month of imprisonment or fines of between 150,000 and 200 million Iraqi dinars, or both.⁴⁹ In addition to the specific penalties provided for in the law, anyone who causes environmental damage shall be subject to civil compensation and responsibility for removing or correcting the damage.

As regards environmental requirements in connection with decommissioning, the IOC must present a decommissioning plan to the management committee at least 24 months before the estimated date of the end of commercial production including environmental considerations. The IOC has the right, but not the obligation, to create a 'decommission reserve fund' during the last 10 years of the PSC's term. Amounts paid towards the fund shall be recoverable by the IOC as petroleum costs in accordance with the terms of the PSC.⁵⁰

VIII FOREIGN INVESTMENT CONSIDERATIONS

i Establishment

The KOGL requires that any IOC operating in the KRI pursuant to a PSC shall establish an office in Kurdistan.⁵¹ The term 'office' as used does not specify whether the 'office' must be a branch office or a separate local legal entity such as a subsidiary LLC. In practice, however, the MNR gives preference to the registration of branch offices.

47 Article 37.1, Model PSC.

48 Article 37(1)(10), KOGL and Article 23.8, Model PSC.

49 Article 42, KRG Environment Law No. 2/2008.

50 Article 38.1, Model PSC.

51 Article 46, KOGL.

The procedure for registering a branch entails submission by the parent company of its corporate documents, financial statements and undertakings to assume liabilities of branch as well as a letter of intent and corporate resolution resolving on the establishment of a branch office in the KRI.

Specifically for oil and gas activities, evidence of registration on the MNR Approved Vendor List (an online registration platform)⁵² or a decision by the MNR approving this registration is also required.

The approval and certificate of registration of the branch is usually issued within two to three weeks of the date of submission of the completed set of documents to the Register of Companies.

ii Repatriation of foreign currency

At present there are no foreign currency exchange restrictions applicable in the KRI and foreign companies are free to repatriate funds without restriction subject to compliance with anti-money laundering requirements imposed by the Central Bank of Iraq.

iii Preference to local resources

IOCs and subcontractors are required under a PSC and local law to provide training to local employees and, where possible, 'to maximise knowledge transfer to the people of the region'.⁵³ Training may include scholarships, funding for education⁵⁴ and secondment of government employees to the IOC.⁵⁵ Costs for training contained in the training plan and advance funding are recoverable as petroleum costs under the PSC.⁵⁶

The Model PSC entitles the IOC to hire foreign personnel whenever the personnel from the KRI and other parts of Iraq do not have the requisite technical capability, qualifications or experience.⁵⁷ The IOC is required to obtain residency permits from the KRG Ministry of the Interior for all foreign personnel based on the approval of the MNR.

As with employment, IOCs and their subcontractors are required to give preference to partnering with local companies and using local products and materials. It is noteworthy that, in selecting IOCs, the government is entitled to give preference to IOCs that partner with local companies.⁵⁸ The training programme submitted by the IOC is also one of the considerations in selecting IOCs.

During 2021, the MNR commenced a secondment programme requiring all IOCs to accept secondees from the MNR as well as to provide secondees to the MNR.

iv Anti-corruption

Kurdish officials launched a strategic good governance and transparency campaign as early as 2009 in cooperation with the international consulting firm PricewaterhouseCoopers. All PSCs provide that any reasonably proven violation of the anti-corruption laws applicable in the KRI shall render the PSC void *ab initio*.

52 www.mnronline.com/Online/Registration/.

53 Articles 45, KOGL and 23.4, Model PSC.

54 Article 45, KOGL.

55 Article 23.2, Model PSC.

56 Article 23.3.1, Model PSC.

57 Article 23.3, Model PSC.

58 Article 44(2), KOGL.

While certain compliance issues regarding doing business in Kurdistan remain, based on the above it seems reasonable to exempt the KRI from the general corruption ranking of Iraq.

In 2020, the Oil and Gas Products Anti-Smuggling Law No. 3/2020 was passed by the Kurdish Parliament in which certain corrupt practices were criminalised, including the smuggling of oil and its by-products, embezzlement and sale of oil products that are assigned to the government or non-governmental authorities, fraud or manipulation of any licence or official document for the purpose of smuggling. The foregoing carry a penalty of imprisonment of five to ten years in addition to a fine of four times the amount of the violation.

IX CURRENT DEVELOPMENTS

A decision of the Federal Supreme Court remains pending in the proceedings initiated by the central government in 2012 challenging the KRG's right to independently export crude oil from the KRI. The final decision of the Federal Supreme Court on the matter, whether positive or negative, will have far-reaching implications on the oil and gas landscape of the KRI and Iraq as a whole.

Former Minister of Natural Resources Dr Ashti Hawrami has held the position of Deputy Prime Minister for Energy Affairs since July 2019. In 2021, Dr Kamal Atroshi was appointed the new Minister of Natural Resources.

In 2020, a new revenue-sharing deal based on border revenue from customs duties rather than from oil was reached between the central government and the KRI, taking the pressure off the much disputed and unresolved issues relating to Kurdish oil and the KRI's competencies related thereto. It remains to be seen how the relations between the KRG and central government administrations will develop and to what extent the central government will interfere or hinder the KRI's oil and gas sector in the future.

ABOUT THE AUTHORS

FLORIAN AMERELLER

Amereller Legal Consultants

Dr Florian Amereller has spent the past 25 years in the Middle East representing a broad client base of primarily multinational companies on various aspects of business in the Middle East. He also represents some Arab governments and leading entrepreneurial families in the region. Florian Amereller is fluent in Arabic and is a member of the Executive Board of the Arab-German Chamber of Commerce and Industry (Ghorfa), a board member of the German-Arab Chamber of Industry and Commerce, a founding board member of the Society for Arab and Islamic Law (Germany) and founder or member of various other European and international associations and expert committees for legal development and reform in the Arab world. In addition to his advisory work as a lawyer, Florian Amereller frequently acts as sole arbitrator, co-arbitrator and chair in arbitration proceedings related to the Middle East. He also sits on the boards of a number of leading regional businesses. Florian Amereller holds a PhD and an LLM in Islamic law (Islamic banking) and has published extensively on Arab business law.

DAHLIA ZAMEL

MENA Associates in association with Amereller Legal Consultants

Dahlia Zamel was born in Cairo, Egypt in 1976. She has a BA from the Arab Academy for Science, Technology and Maritime Transport and a law degree from Cairo University (LLB, 2009). Dahlia is fluent in both English and Arabic. Her practice areas include: corporate and commercial law, oil and gas, mergers and acquisitions, project finance, tax law and labour law. Before joining Amereller Legal Consultants, Dahlia spent four years with the legal department of the International Finance Corporation in Cairo and Istanbul covering both the MENA region and Central Asia. Dahlia has extensive regional experience and is currently based between Cairo, Egypt and Erbil, Iraqi Kurdistan, and covers both central Iraq and the autonomous region of Kurdistan.

AMERELLER LEGAL CONSULTANTS

One by Omniyat, #1402 Business Bay
PO Box 97706
Dubai
United Arab Emirates
Tel: +971 4 432 3671
Fax: +971 4 432 3673
fba@amereller.com
dubai@amereller.com

Mena Associates in association with Amereller Legal Consultants
World Trade Center
Gulan Tower, 10th Floor, Office #4
Erbil
Kurdistan Region, Iraq
Tel: +964 750 346 0444
zamel@amereller.com
erbil@amereller.com
baghdad@amereller.com

www.amereller.com

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