

Negotiating Petroleum Contracts: Win-Win Approaches to Negotiation

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Introduction



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Structure of Petroleum Contracts



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Meaning of Contract



- Exchange of promises – Contract, Treaty, Bi-lateral, Unilateral.
- Meeting of the minds.
- Sanctity – any variation must be agreed.
- Enforceability and Dispute Resolution Mechanism – local litigation, arbitration and international litigation.

Key Elements



- Offer
- Acceptance – by words or conduct. Silence is not acceptance.
- Consideration – different from a gift but mustn't be an exchange of money. A common law requirement. Exempts a Deed.
- Awareness, mutuality or meeting of the minds – undue influence, duress or fraud are vitiating elements.
- Intention to enter legal relations - MoU
- Capacity
- Legality
- Statutory requirements
- Perfection

Why in the Petroleum Industry?

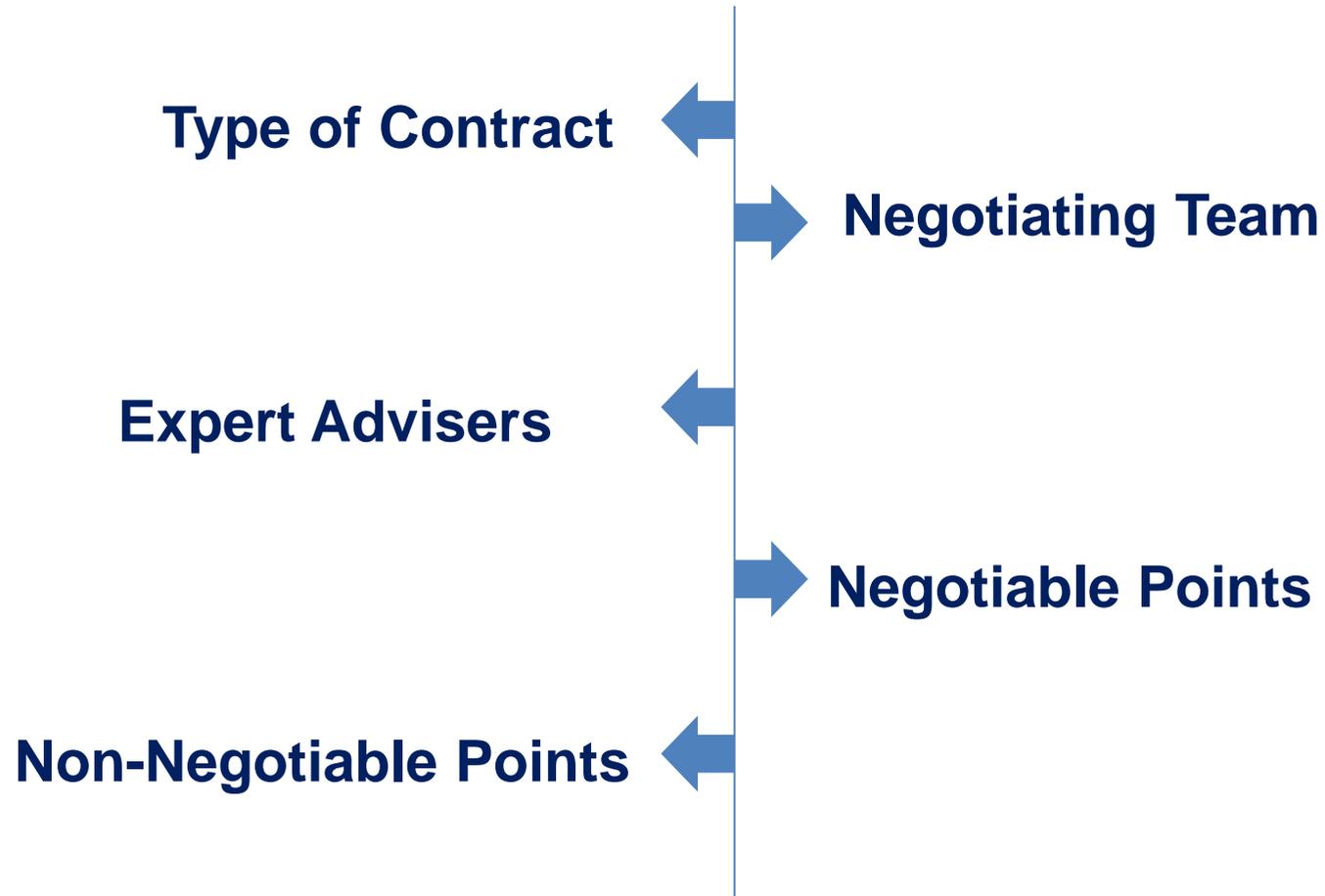
- To explore and develop their natural resources, many governments rely on IOCs (and other independent/indigenous oil companies) because of their expertise, financial resources and experience in exploiting and marketing oil and gas resources.
- The relationship between the government and the oil companies is determined by negotiated contracts.
- Contract negotiation is a key feature of petroleum business operations between government and oil companies.
- Negotiation is not a simple process. It involves complexities of legal, technical and financial issues.
- Since petroleum contracts pay a vital role in the revenue of governments, they need to be carefully and effectively managed.
- Contract negotiation is relevant at all levels of the petroleum value chain.

CRITICAL STEPS TO NEGOTIATION

Govt. should set out its main objectives and understand the objectives of the Oil Companies



CRITICAL STEPS TO NEGOTIATION



STRUCTURE OF PETROLEUM CONTRACTS

Three Main Sections

The Preamble/Recitals

The Operative/Substantive Provisions

Appendixes; Integral the Contract

OPERATIVE AND SUBSTANTIVE PROVISIONS

The most common provisions are:

- **Parties:** government (or state-owned enterprise) and IOC (through an SPV, **but government should require a guarantee from the parent**). Multiple parties in JOAs, etc.
- **Effective Date:** could be upon signature, gazetting or sanctioned by law.
- **Oil Price:** a benchmark price (using a spot market) should be agreed. Taxes, royalties and profit sharing will depend on the price.
- **Health and Environment**
- **National Interest Provisions**

OPERATIVE AND SUBSTANTIVE PROVISIONS

Common provisions cont'd:

- **Operatorship**
- **Joint Committees**
- **Carry Arrangement**
- **Cost Oil, Profit Oil (Compensation), Tax Oil (PPT or HCT)**
- **Production Bonus**
- **Pre-emption Clauses**
- **Work Program:** it should show how to best protect the environment.

OPERATIVE AND SUBSTANTIVE PROVISIONS

Common provisions cont'd:

- **Governing Law:** usually local law but parties can choose international law.
- **Dispute Resolution and ad-hoc International Arbitration**
- **Stabilization Clauses to minimize political risks:** it essentially freezes the law and regulatory framework as it stood at the time of the contract.
- **Force Majeure:** natural disasters, war, riots, labor disputes, pipeline vandalization.
- **Termination:** especially if there is no development.

OPERATIVE AND SUBSTANTIVE PROVISIONS

Common provisions cont'd:

- **Decommissioning and Abandonment**
- **Contract Area and Map**
- **Form of Parent Company Guarantee**
- **Accounting Procedures**
- **Measurement and Evaluation Procedure**
- **Design Standards and Specifications**



Bibliography: Strategy of Oil Contract Negotiation by Salih, M.S., Salih, R.S. in the International Journal of Business and Social Science, Vol. 6, No. 9, 2015

Questions?



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