

## **Remarks on the Second Amendment of Oil Refining Investment Law 64 of 2007**

**Ahmed Mousa Jiyad,  
Iraq/ Development Consultancy & Research,  
Norway.  
Email: [mou-jiya@online.no](mailto:mou-jiya@online.no)**

The text of the second amendment has specific very serious flaws that either it should be rejected or addressed properly leading to redrafting the amendment clearly.

The proposed amendment was posted on the Parliament website giving the opportunity for the public and professional alike to have their say in the proposed laws. This is highly appreciated move by the legislating authority since good governance comprises many components among them transparency, participation and recognition of rights to information.

This intervention is partly responding to such call by the Parliament considering the eminent voting on the amendment; but mostly it is a continuation to my consistent follow-up of the development in the petroleum sector and sustainable development effort, or lack of it, in the country. More specific, the purpose of this intervention is to identify the flaws in the proposed legislation, to explain why they are so and proposes practical alternatives.

It should be stated that the first reading of the proposed second amendment was done by the Iraqi Parliament on 6 May 2015 while the second reading took place on 30 July 2016. The next step, according to the parliamentary procedure, is to debate the proposed amendment leading to either approving or rejecting or proposing alterations to the proposed amendment.\*

### **First: Crude oil price discount**

Article 1 of the second amendment suggests amending article 5 to provide 5% discount off FOB price of crude oil provided the discount is no less than \$4/barrel and no more than \$8/barrel.

The remarks on the above are the following:

1. Which export terminal should be used to estimate the FOB? Currently, Iraq has/uses two export outlets: North Arabian Gulf (includes Basra Oil Terminal-BOT; Khor al-Amya Oil Terminal-KAOT; and three/four Single Point Mooring (SPM) crude loading buoys) and Ceyhan (in Turkey). Surely, there are meaningful FOB differences between these outlets especially between North Arabian Gulf and Ceyhan. In the long run there could be more export terminal, for example, in Aqaba-Jordan or Syria. Unless the export terminal is selected the investor could chose or insists on the one which has the lowest FOB to ensure the highest comparative discount.

To avoid this complication one assumes the Ministry of Oil and the Investor agree on this issue when concluding the “contract” referred to in this article. It is further assumed that the impact of the supplied crude oil quality issues (API and other crude contents such as

sulphur) will be covered by the procedural matters relating to crude oil measurements referred to in articles 6 and 7 of Law 64/2007.

2. Providing the 5% (increased from 1% offered originally in the Law 64/2007) discount off FOB price seems good-enough incentive for the investor and could very well be supported. But the conditional dollar values of the discount of less than \$4/barrel and no more than \$8/barrel is completely unnecessary and could be damaging from at least three aspects: economic /financial; contract negotiation and corruption as discussed below:

- 2.1. The Economic and Financial aspects: Both “monetary/ nominal” discount thresholds (\$4/barrel and \$8/barrel) were/ are perceived in an environment of “high oil price régime”; they assume high oil price a barrel ranging between \$80 and \$160 respectively to give the corresponding 5% discount. These are totally unrealistic under current and the foreseeable short to medium ranges. For the long term one needs, always, to keep in mind the known cyclical pattern of oil price movement. If one takes Iraq’s oil exports price of August 2016 the above mentioned “monetary/ nominal” discount thresholds would mean 10.19% and 20.38% (instead of 5%).

**The conclusion is that fixing the “monetary/ nominal” discount thresholds (\$4/barrel and \$8/barrel) could generate higher economic and fiscal burden when oil prices are low; a situation that is highly recurring and thus should be avoided. Regrettably, the proposed amendment of this article increases the vulnerability of low oil prices instead of mitigating its negative consequences.**

- 2.2. Contract negotiation: when the range of price discount is so wide, it is highly likely that the investor adopts positional, hardball, zero-sum negotiation tactics and attitude to ensure having the maximum discount of \$8/barrel and to extract further concessions from the Iraqi side; any role-play and perceived position methods would only indicate to the above anticipated negotiating behavior.

Obviously, such a condition that is created by the proposed second amendment would weaken the Iraqi side negotiation position and could lead to two outcomes: long difficult and could be acrimonious contract negotiation that could damage the relationship between the Iraqi side and the investor; and a contract that is lopsided towards investor interest.

**All such unfavorable possible circumstances could be avoided by limiting the price discount in percentage instead of absolute monetary value.**

- 2.3. Corruption enabling environment: the 100% wide range (\$4:\$8) of price discount could, very obviously, create conditions conducive to corruption and rent-seeking behavior by giving into the investor demand for upper discount range of \$8/barrel.

While the law and related contracts should have strict “punitive” anti-corruption measures, they should also have or constitute to act as “preventive” measures that discourage or do not create corruption environment.

Examples of corruption and rent-seeking behavior in the Iraqi petroleum sector are, regrettably, many and the absolute monetary value in the proposed amendment could

very well exacerbate corruption practices and increases its negative impacts. The proposed second amendment of Law 64/2007 should prevent and eradicate any possibility that is, or constitute to be, conducive to corruption.

**Based on the above I strongly suggest deleting from the amended article 5 the dollar thresholds, “no less than \$4/barrel and no more than \$8/barrel” and keeping the 5% only.**

### **Second: Ministry of Oil role under Article 17-second**

The proposed amendment of this article says,” the Ministry of Oil in coordination with the Region [Kurdistan-Iraq] and provinces not assembled in a region provides the necessary requirements for the project [refinery] in all its phases.”

The remarks on the above text are the following:

- 1- The wording, “the Ministry of oil,..., provides the necessary requirements for the project [refinery] in all its phases” is too broad, open-ended and could generate very different and could be conflicting interpretation. This ambiguous and loose wording could create many problems at different phases of the project and could undermine its proper implementation and operation;
- 2- The above, especially “all its phases” could be interpreted to constitute “obligations” for the Ministry of Oil in providing the necessary requirements both physical (infrastructure/ logistics) or operational such as marketing refining oil product;
- 3- The text clearly contravenes other provisions of the Law, especially those related to the responsibility of the investor to provide the necessary requirements for the project/refinery as stipulated in articles 6-Second and 13;

**The proposed text of the amended article 17 is improper unacceptable and should be redrafted clearly to prevent ambiguity and flaws mentioned above, and be consistent with other provisions of Law 64/2007.**

### **Third, the new Article 20**

The second amendment proposes a new article 20 which reads, “for the Ministry contracting with the investors by contracts to provide the investor with crude oil supplies and receive the refined products against fees, agreed upon between the two parties, that cover operational wages [costs] and suitable profit”

This new article is risky and has or could create many problems and unintended or unwanted implications and consequences:

- 1- The first part of the article, regarding contract for crude oil supplies, is practically and textually redundant because this issue is already covered by Article 5; by repeating the same substance in different wording could weaken the legislation; deepens its inconsistency and increases the likelihood of different contradictory interpretations.

**Thus, the part relating to “provide the investor with crude oil supplies and” should be deleted from this article;**

- 2- The expression “receive the refined products” could be interpreted as an obligation on the Ministry of oil to “purchase or buy” the refined products. But again this expression is either redundant or contradictory since Article 10-Second of the Law grants the Ministry the “option and priority” to purchase what it needs from the oil products offered, by the Investor, in the local market.

**As was the case with the previous item, the expression “receive the refined products” should be deleted from this article;**

- 3- It is not clear what the last part of the article, “fees, agreed upon between the two parties, that cover operational wages [costs] and suitable profit” really means ”; who pays whom and for what: delivery of crude oil or receiving the refined products? What about capital cost?

**Therefore, this part of the article either be redrafted carefully and thoroughly or, preferably, delete it completely;**

- 4- In addition to the above remarks it is not known whether these contracts between the Ministry and each investor will be signed “once and for ever” or reviewed periodically and, if so, how often.

Considering the fact that the refinery period could be as long as 50 years it is really important to disclose more information on this issue either by this amendment of Law 64/2007 or through the directives, which the Minister of Oil should issue in accordance with Article 3 of the proposed second amendment relating to article 17-First of Law 64/2007.

**Based on the above remarks on the new Article 20 it is highly recommended to either deleting the article completely, which is preferable, or redraft it carefully to remove all identified flaws, ambiguities, repetitions and inconsistencies.**

**My final conclusions and suggestions are:**

- 1- The current text of the proposed second amendments to Law 64/2007 suffers from many serious problems and shortcomings and, therefore, it should be rejected by the Parliament;
- 2- The Parliament should request the government (Ministry of Oil) to seriously and carefully reconsider and redraft the second amendment taking into considerations the analysis and remarks presented above;
- 3- The current Minister of Oil has, correctly, said recently and repeatedly that decisions should be based on “solid studies”. Therefore, the proposed second amendment should make it mandatory on the investor(s) to prepare and submit “comprehensive feasibility study with elaborated cash-flow and sensitivity analysis” as part of its investment proposal in accordance with the amended Article 17-First.

\* I learned today that the Parliament had approved the Amendment; but the final text will be known once the Law on the amendment is published in the Official Gazette –*Alwaqie aliraqia*

Norway.

27 September 2016