GIBSON DUNN

Recent Iraqi Supreme Court Decision Likely to Trigger Investment Arbitration Claims

Client Alert | June 17, 2022

On February 15, 2022, the Federal Supreme Court of the Republic of Iraq ("**Iraq**") issued a sweeping decision upending the existing legal framework governing the oil sector in the country ("**Court Decision**").[1] The Government of Iraq has since taken numerous steps to implement the decision, which may have significant and far-reaching repercussions on international oil companies operating under petroleum contracts with the Kurdistan Regional Government ("**KRG**").

The Court Decision, among other things, purports to (*i*) repeal the Kurdistan Region Oil and Gas Law (No. 22 of 2007) based on which the KRG has entered into Production Sharing Contracts ("**PSCs**") with international oil companies, (*ii*) rule that the Federal Ministry of Oil is entitled to pursue the nullification of any contracts entered into by the KRG with third parties regarding oil exploration, extraction, export and sale, (*iii*) rule that the Ministry of Oil and the Federal Board of Supreme Audit are entitled to review and revise any oil contracts entered into by the KRG, and (*iv*) order the KRG to hand over to the federal government all oil production it has extracted from oilfields.

In response to the Court Decision, the KRG Prime Minister reaffirmed the KRG's commitment to its contracts with international oil companies and emphasized that the KRG will not relinquish any of its rights.[2] In addition, on May 30, 2022, Kurdistan's Judicial Council released a statement challenging the legality of the Court Decision and the validity and competence of the Court itself.[3]

While the Court Decision does not automatically terminate contracts with international oil companies, the Government of Iraq has indicated that it intends to force the cancellation or substantial revision of such contracts. On February 26, 2022, the Oil Minister of Iraq issued an order creating a committee with the purpose of executing the Court Decision.[4] On March 24, 2022, the Oil Minister issued an order to the KRG to send for its review copies of all oil and gas contracts it has entered into since 2004.[5] The Oil Minister has also proposed establishing a state-owned regional oil company that would manage oil assets in the KRG and that would be overseen by the Government of Iraq.[6] More recently, the Oil Ministry has also commenced proceedings with several international oil companies, summoning such companies to appear before the Court in Baghdad on June 5, 2022.[7] While the date of the initial hearing was postponed in order to allow for the summons to be perfected, the proceedings are ongoing.[8]

Such interference by the Iraqi Government seems all but certain to lead international oil companies to commence legal proceedings against Iraq if the matter is not resolved promptly. The affected investors are expected to seek redress before international *fora*, in particular, contract-based arbitrations under the terms of the PSCs and, in parallel, treaty-based arbitrations under applicable international investment agreements. Given the number of international oil companies operating in the Kurdistan Region pursuant to long-term contracts with the KRG (over 30), Iraq's exposure to damages claims could well

Related People

Rahim Moloo

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

reach tens of billions of dollars.

I. Contract Claims under Production Sharing Contracts

Iraq could be held contractually liable for breaching the PSCs by taking any action to either terminate or modify these agreements. It could also be held liable for violating the stabilization clause (contained within the KRG Model PSC ("**Model PSC**")) if it takes any measure altering the fiscal or economic conditions resulting from laws or regulations in force on the date of signature of these agreements.[9]

Iraq could be contractually on the hook since, as a matter of Iraqi constitutional law, the KRG is a constituent subdivision of Iraq.[10] In the circumstances, international and/or English legal principles such as attribution or alter ego are likely to be relevant (English law being the applicable law stipulated in the Model PSC).h .[11] In this regard, Claimants could in particular point to a recent decision by the High Court of Justice in England which found, in connection with breaches of two oil and gas PSCs, that acts by the KRG "*were done in exercise of the sovereign authority of the state of Iraq*."[12]

Investors are expected to initiate arbitrations seated in London, England, and governed by the London Court of International Arbitration ("**LCIA**") Rules, as expressly provided for in the Model PSC.[13] Notably, the Model PSC broadly defines the scope of "*disputes*" to cover, among other things, any dispute as to the "*existence*," "*validity*," "*enforceability*," or "*termination*" of the contract.[14]

II. Treaty Claims under Applicable International Investment Agreements

Iraq has also entered into several Bilateral Investment Treaties ("**BITs**") and multilateral Treaties with Investment Provisions ("**TIPs**") that provide substantive protections to investors and commit Iraq to resolving disputes through arbitration. For example, the Japan-Iraq Bilateral Investment Treaty ("BIT") protects against "*expropriation*" and "*arbitrary measures*" and affirms that investors are to be afforded both "fair and equitable treatment" and "full protection and security."[15] Similarly, investors who are nationals of a member State of the Organization of the Islamic Conference ("**OIC**") can initiate arbitration pursuant to the OIC Investment Agreement. The OIC Investment Agreement both protects nationals of OIC Member States against expropriation and allows such nationals, through its most-favored-nation provision, to avail themselves of substantive protections contained in other investment treaties to which Iraq is a party.[16]

III. Conclusion

The international oil companies impacted by the Court Decision have numerous legal avenues for seeking redress as a result of the substantial harm they may suffer. It is therefore very possible that Iraq will find itself subject to numerous claims in the range of tens of billions of dollars (if not more) before international fora for years to come due to the Court Decision and the Government's actions to implement that decision.

---

[1] *Federal Minister of Oil and Ali Shadad Fares v. Minister of Natural Resources of the Kurdistan Region and Speaker of Parliament of the Kurdistan Region*, Supreme Court of the Republic of Iraq, 59/Federal/2012 unified with 110/Federal/2019 (15 February 2022).

[2] Press Conference of Masrour Barzani, Prime Minister of the Kurdistan Region of Iraq, 3 March 2022.

[3] Statement of the Judicial Council of the Kurdistan Region of Iraq No. 1511, 30 May 2022. The KRG maintains that the Court was not properly constituted as the Federal Supreme Court capable of determining matters of constitutional law.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

[4] Iraq Oil Reporter, *Uncertainty Deepens After Landmark Ruling Against Kurdistan's Oil Sector*, 8 March 2022, *accessible*: https://www.iraqoilreport.com/news/uncertainty-deepens-after-landmark-ruling-against-kurdistans-oil-sector-44651/

[5] Iraq Oil Reporter, *Uncertainty Deepens After Landmark Ruling Against Kurdistan's Oil Sector*, 8 March 2022, *accessible*: https://www.iraqoilreport.com/news/uncertainty-deepens-after-landmark-ruling-against-kurdistans-oil-sector-44651/

[6] Iraq Oil Reporter, *Baghdad Launches Legal Action Against Kurdistan's Oil Companies*, 2 June 2022, *accessible* here.

[7] Iraq Oil Reporter, *Kurdistan Opens New Front in Baghdad Legal Battles*, 9 June 2022, *accessible*: https://www.iraqoilreport.com/news/kurdistan-opens-new-front-in-baghdad-legal-battles-44896/

[8] Iraq Oil Reporter, *Kurdistan Opens New Front in Baghdad Legal Battles*, 9 June 2022, *accessible*: https://www.iraqoilreport.com/news/kurdistan-opens-new-front-in-baghdad-legal-battles-44896/

[9] Model Production Sharing Contract, Kurdistan Regional Government, Article 43.

[10] *See* Constitution of the Republic of Iraq, Article 117.

[11] Model Production Sharing Contract, Kurdistan Regional Government, Article 43; *See Chevron Bangladesh Block Twelve, Ltd. and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd. v. People's Republic of Bangladesh*, ICSID Case No. ARB/06/10, Award (17 May 2010); *Perenco Ecuador Limited v. Republic of Ecuador and Petroecuador*, ICSID Case No. ARB/08/6, Decision on Jurisdiction (30 June 2011).

[12] *Dynasty Company for Oil and Gas Trading Limited v. Kurdistan Regional Government of Iraq and Dr. Ashti Hawrami*, English High Court of Justice 2021 EWHC 953 (Comm) (23 April 2021).

[13] Model Production Sharing Contract, Kurdistan Regional Government, Article 42.1.

[14] Model Production Sharing Contract, Kurdistan Regional Government, Article 42.1.

[15] Agreement between Japan and the Republic of Iraq for the Promotion and Protection of Investments, 25 February 2014, Articles 5(1), 5(2), and 5(3).

[16] OIC Agreement, Articles 8 and 10.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's International Arbitration practice group, or the following authors:

Rahim Moloo – New York (+1 212-351-2413, rmoloo@gibsondunn.com) Jeff Sullivan QC – London (+44 (0) 20 7071 4231, Jeffrey.Sullivan@gibsondunn.com) Abdallah Salam – New York (+1 212-351-2355, asalam@gibsondunn.com)

Please also feel free to contact the following practice group leaders:

International Arbitration Group: Cyrus Benson – London (+44 (0) 20 7071 4239, cbenson@gibsondunn.com) Penny Madden QC – London (+44 (0) 20 7071 4226, pmadden@gibsondunn.com)

© 2022 Gibson, Dunn & Crutcher LLP Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

advice.

Related Capabilities

International Arbitration

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**