

The Role of Anti-corruption Clauses in the Fight Against Corruption in Petroleum Sector

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Abstract : Despite the rise of global anti-corruption movements and the strong emergence of international and national anti-corruption laws, corrupt practices are still prevalent in most places, and countries still struggle to translate these laws into practice. On the other hand, in most countries, political and economic elites oppose anti-corruption reforms. In such a situation, the role of external actors, like the other States, international organizations, and transnational actors, becomes essential. Among them, Transnational Corporations [TNCs] can develop their own regime-like framework to govern their internal activities, and through this, they can contribute to the regimes established by State actors to solve transnational issues. Among various regimes, TNCs may choose to comply with the transnational anti-corruption legal regime to avoid the cost of non-compliance with anti-corruption laws. As a result, they decide to strengthen their anti-corruption compliance as they expand into new overseas markets. Such a decision extends anti-corruption standards among their employees and third-party agents and within their projects across countries. To better address the challenges posed by corruption, TNCs have adopted a comprehensive anti-corruption toolkit. Among the various instruments, anti-corruption clauses have become one of the most anti-corruption means in international commercial agreements. Anti-corruption clauses, acting as a due diligence tool, can protect TNCs against the engagement of third-party agents in corrupt practices and further promote anti-corruption standards among businesses operating across countries. An anti-corruption clause allows parties to create a contractual commitment to exclude corrupt practices during the term of their agreement, including all levels of negotiation and implementation. Such a clause offers companies a mechanism to reduce the risk of potential corruption in their dealings with third parties while avoiding civil and administrative penalties. There have been few attempts to examine the role of anti-corruption clauses in the fight against corruption; therefore, this paper aims to fill this gap and examine anti-corruption clauses in a specific sector where corrupt practices are widespread and endemic, i.e., the petroleum industry. This paper argues that anti-corruption clauses are a positive step in ensuring that the petroleum industry operates in an ethical and transparent manner, helping to reducing the risk of corruption and promote integrity in this sector. Contractual anti-corruption clauses vary in terms of the types commitment, so parties have a wide range of options to choose from for their preferred clauses incorporated within their contracts. This paper intends to propose a categorization of anti-corruption clauses in the petroleum sector. It examines particularly the anti-corruption clauses incorporated in transnational hydrocarbon contracts published by the Resource Contract Portal, an online repository of extractive contracts. Then, this paper offers a quantitative assessment of anti-corruption clauses according to the types of contract, the date of conclusion, and the geographical distribution.

Keywords : anti-corruption, oil and gas, transnational corporations, due diligence, contractual clauses, hydrocarbon, petroleum sector

Conference Title : ICAGGHR 2024 : International Conference on Anti-Corruption, Good Governance and Human Rights

Conference Location : Pattaya, Thailand

Conference Dates : February 05-06, 2024