Changing the Economic Equilibrium of Oil Contracts and its Restoration as a result of the Collapse of the Stability of the Contracts Emphasizing the Fundamental Changes in the Contractual Situation

Since oil is one of the most important commodities in the world today, foreign investors must, in principle, accept high risk; especially in developing countries; because the domestic economy of most of these countries is based on oil. Perhaps this is why oil investors foresee various tools to deal with the inherent risk in these contracts; such as: risk distribution, risk management, risk insurance and finally, risk hedging. The most common of these is risk hedging, whereby the investor uses political, economic and financial influence to dissuade the host government from changing its existing laws. In the meantime, contract stability and compliance are the main risk sharing solutions between the parties to a long-term contract to ensure contractual stability. In this case, investors can reduce their risk by including clauses such as: international arbitration, choice of law, compliance clause, renegotiation and stabilization clauses in their contracts. The contract stabilization clause, often called the stability clause, is included in most oil and exploration contracts where the owner of the resources, the host government, and the foreign investor are prohibited from making an independent decision to change, cancel, or terminate the contract. In a situation where the contract loses its stability, the parties are forced to resort to contractual terms to restore the lost stability. This clause plays an important role in protecting the oil contract; in a way that causes: on the one hand, international law and on the other hand, the laws of the host country to guarantee the economic rights of the foreign investor; in such a way that the provision of the stability clause in the oil contract prevents new laws from being enacted to enforce the rule of will, except with mutual consent; in fact, the contract stabilization clause has the result that the stability of the contract brings its effectiveness throughout the project and in different circumstances. However, the fundamental question is how the economic balance of oil contracts is disrupted and how the lost balance is restored, even though before implementing the stabilization clause in an oil contract, the host government must have accepted the terms of the stabilization clause, and acceptance means that the host government has waived its right to unilaterally change the management trusted by investors.

It is clear that oil and gas are two valuable commodities in the economic, social, political and legal positions of countries with energy resources, in the factionalization of governments in international relations; therefore, it is natural that oil contracts, which are government, administrative and long-term contracts in the upstream sector, are considered to be among the contracts that are always subject to changes in various aspects. In such a scenario, fundamental changes in these circumstances over time may disrupt the economic balance and equilibrium of the contract and, depending on the case, cause a change in the nature of the rights and obligations of the parties; This situation causes the initial nature of the oil contract to be overshadowed by subsequent events, including the invocation of force majeure, contract modification, renegotiation, termination, etc; However, after fundamental changes in the circumstances governing the oil contract occur, these changes, which are derived from events after the conclusion of the contract and during the implementation of the project, have effects and, at the same time, guarantees of performance on the life of the contract, rights, responsibilities and commitments of the parties. This is due to the special characteristics of these contracts compared to other contracts subject to administrative law, the nature of the activities and the long-term duration of the contract and the need for the continuation of the commitments of the parties during this period of time. In this case, in all oil contracts, these requirements are emphasized that all factors affecting the contract that arise during the implementation of the oil contract and are generally technical and engineering, contractual, legal and economic issues, are discussed and reviewed in advisory and specialized bodies consisting of representatives and experts of the parties. Also, in all oil contracts, a renegotiation

mechanism is foreseen, so that when the economic balance of the contract is disrupted, the parties, through new negotiations, decide on the sustainability and continuation of the project. By using this mechanism, the parties can review and reexamine the contract and make it possible to continue its implementation, instead of terminating the contract and entering into unfriendly terms, such as: termination and compensation and the obligation to compensate for damage.
In fact, in this assumption, renegotiation acts as a mechanism for managing conflicts and disputes that prevents the contract from being terminated if the circumstances governing the contract change; however, if the joint committee fails to manage the fundamental circumstances of the contract or if they are not adjusted through renegotiation, then adverse effects will be created on the body of the oil contract that are much more complex and nuanced than the previous two situations; such as: suspending the implementation of the contract and creating a right of termination for one of the parties to the contract. In the first assumption, it sometimes happens that the impact of some changes and events on the nature of the oil contract is such that the implementation operations are suspended for a period of time and face unpredictable interruptions. In this assumption, a precise and rapid decision must be made regarding the permanence or impact of this event on the spirit of the contract; In other words, the conditions of occurrence of these changes and the period of their continuation are such that, depending on the situation and circumstances, one must either wait for the improvement of these conditions or take the initiative to resolve them. On the one hand, futile waiting can be the source of irreparable economic damage and losses, and on the other hand, the termination of the contract itself is another complicated situation; therefore, this situation must be resolved as quickly as possible. If these conditions can be resolved - such as: floods, earthquakes or other natural events - and there is a possibility of restoring the situation to its previous state after an external event, the waiting of the parties to overcome the suspension is logical and natural; however, if the events that have occurred make the implementation of the project impossible, there is no longer any reason to wait and inevitably, one must resort to the right of termination. The following article, while presenting the concept of economic balance, turns to the legal foundations of restoring the lost stability of contracts whose economic balance has changed and been lost, and seeks to explain and prove this hypothesis and proposition that a vote can be cast to restore the lost economic balance of an oil contract when the fundamental changes in the circumstances of the basic contract are unexpected and unpredictable, unavoidable and external; otherwise, the lost stability cannot be restored through renegotiation and a vote can be cast to establish the stability of the oil contract by trying to restore the economic balance.
The long-term nature of oil contracts causes this contract, in the face of unforeseen, sudden and unpredictable events and occurrences, to distort the initial economic balance that is the source of the parties' will to conclude it, and as a result, the contract in question loses its balance and becomes unstable. Although, in principle, the parties to oil contracts, at the time of concluding them, consider measures to stabilize this balance to a significant extent, nevertheless, this measure has not been able to maintain or guarantee the stability of these contracts until the end. The conflicting realities of investment in oil contracts, which are meant to preserve national interests for the host government and to gain economic profits and benefits for the investor, confront it with challenges; Therefore, when the parties claim the loss of economic balance in the oil contract and come forward to restore it, they inevitably talk about a concept called: contractual stability and stabilization conditions. The general purpose of stabilization conditions is to establish economic balance in oil contracts. This is not achieved by itself and the parties are forced to renegotiate; but usually, it is not renegotiation that restores the balance, but the goodwill of the parties and the type,

quality and nature of the contractual conditions that ultimately lead to the restoration of the lost balance. Therefore, whenever the fundamental circumstances of these contracts change, the parties can seek to change the balance of benefits in order to restore the lost balance; This is sometimes achieved by resorting to stabilization conditions and sometimes with the help of renegotiation. Certainly, without including stabilization conditions in the oil contract, it is almost impossible to assume that the equilibrium will be restored simply by renegotiation, because in this case, the parties to the oil contract do not know exactly what the bargaining is about. What drives the parties to the oil contract to reach a logical and fair solution is the stabilization conditions of the contract in the sense of restoring the stability lost as a result of the fundamental change in the contract.