

Views from members



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A number of countries, including (but not limited to) those with proven petroleum reserves, such as UK and Norway, do not feel compelled to offer stabilization provisions to attract foreign investments, since they have a good track record in dealing with investors from other states.

In a few countries, such as Saudi Arabia, the perception of political risk may be high, but the perception of geological risk is low enough for foreign investors to accept the fact that the economic terms of the legislation are not stabilized.

In most countries with higher political risk than the UK and Norway or with a geological risk level above that of Saudi Arabia, the stability condition is mandatory to attract investment in the petroleum sector.

This is also the case of Romania, where concession of petroleum

Stability Clause in Petroleum Contracts

The strategic importance of petroleum to both consumers and producers, has caused petroleum contracts to retain certain fundamental features over the time. One of the most important such feature is the stability clause whose goal is to guarantee that the terms and conditions of a contract are -frozen- from the date of its conclusion and during the entire term of the contract.⁽¹⁾

operations is made based on petroleum contracts concluded between the National Agency for Mineral Resources ("NAMR") and domestic and foreign legal entities following a public auction procedure. Therefore, stability of the economic terms of the legislation applicable to the petroleum industry is absolutely critical to any foreign investor considering an investment in our country.

This was the reason why, at the time the first Petroleum Law (Law no. 134 of 1995) was in the process of being enacted in Romania, the country's Government and NAMR were advised by international consultants with regard to the fact that the principle of stability of the legislation applicable to the petroleum exploration is internationally recognized and crucial to attract foreign investment in this sector, regardless of the legal instrument used.

The Romanian Petroleum Law no. 238 of 2004 ("Petroleum Law") reiterated this internationally recognized stability principle stipulated by Articles 31 (2) and 61 (1).

Notwithstanding the above, in the most recent draft amendment of the Petroleum Law, it was intended that the Articles 31 (2):

"The provisions of the petroleum agreement shall remain valid for

the entire term of such agreement, except for the case that legal provisions favorable to the title holder of the petroleum agreement are adopted."

and 61 (1):

"The provisions of the petroleum agreements approved by the Government shall remain valid for their entire duration, on the terms on which such agreements were made." should no longer be part of the New Petroleum Law.

It is certain that the contemplated deletion of the referenced articles threatens and has a negative impact on the (economic and otherwise) stability of the existing petroleum agreements and the smooth negotiation of future petroleum agreements based on bidding rounds to be held after the coming into effect of the New Petroleum Law.

Given the above-mentioned, the New Petroleum Law should comprise stability provisions, as their deletion may generate legal disputes between NAMR, as representative of the Romanian State, and the title holders of the existing petroleum agreements. Their removal may even trigger the withdrawal of some title holders from the blocks where they currently conduct petroleum operations, and would seriously deter new investment in the petroleum exploration and production industry in Romania. ■

(1) "Stabilization in Investment Contracts and Changes of Rules in Host Countries: Tools for Oil & Gas Investors" Peter D Cameron