

**EXAMINING CONTRACTUAL STABILITY MEASURES IN LIGHT
OF EMERGING RISKS:
REVISITING THE STABILISATION CLAUSE DEBATE**

*Dickson Ebikabowei Omukoro**

ABSTRACT

The stabilisation clause as a contractual risks management tool is meant to protect the foreign investor from attempts by the host government to modify or terminate the agreement through subsequent changes in legislation. However, the inclusion of these stabilising clauses have failed to stop host governments from unilaterally altering or terminating these agreements in the guise of exercising their sovereign powers under international law as enshrined in the principle of permanent sovereignty over natural resources. The purpose of this paper is to suggest that the insertion of a stabilisation clause is by no means a guarantee that the investor's interests will be protected; and that pre-investment conditions should therefore look to the rational management of change in light of emerging risks by the "prudent" use of the renegotiation clause with the understanding that both parties should benefit or suffer together in the event of change of circumstances especially as it concerns costs arising from environmental protection issues.

* Dickson Ebikabowei Omukoro, LL.B (NDU), BL (Abuja), LL.M (with Distinction) Aberdeen Research Student (PhD), University of Aberdeen, email: dicksonfc@gmail.com

Following abbreviations are used in this article. CEPMLP- Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP); University of Dundee, United Kingdom; IBLJ- International Business Law Journal ; JWELB- Journal of World Energy Law & Business; IELTR- International Energy Law and Taxation Review (Now publishing under its new name: International Energy Law Review (IELR)); JERL - Journal of Energy & Natural Resources Law; OUP- Oxford University Press; PSA- Production Sharing Agreement; SLBF- Stanford Journal of Law, Business & Finance.