

# Dispute Management & Avoidance in the Energy Sector

## INTRODUCTION

- The Energy Industry invests in large, complex, capital-intensive projects that have long life spans. Circumstances, economics, governments and parties invariably change in these energy projects, which can often lead to disputes. The result is that the international energy sector, along with its associated construction projects, makes up the largest portfolio of international commercial and state investment disputes in the world.
- Disputes are therefore a significant risk in any international energy project. The risk is not whether a project will have a dispute, but rather in how well a party can manage that dispute to get a satisfactory result.
- Parties therefore need to continually manage that risk from the inception of the deal through to the point when a dispute arises and is eventually resolved. This course provides the knowledge and tools to do so.
- Energy disputes often have a very high monetary value, a strong public interest and a cross-border character, due to the origin of the parties involved. How Alternative Dispute Resolution (ADR) can lead to better and often quicker decisions, enhanced certainty, more procedural flexibility, potential cost savings, and other efficiencies. ADR will allow the industry, including businesses, regulators, and consumers, to take more control over its destiny and create workable solutions fitting individual circumstances.
- This training course will give participants working knowledge of the full range of ADR options from facilitation, arbitration, mediation, med-arb, early neutral evaluation and expert determination.

This training course will highlight:

- The fundamental types of disputes in the energy sector
- The methods of dispute resolution methods available
- Benefits of ADR in resolving energy disputes
- Analysing Conflicts and choosing ADR Approaches
- Dispute Avoidance by Improving Conflict Management Skills & Awareness

## OBJECTIVES

At the end of this training course, you will:

- Comprehensively understand the different types of energy disputes
- Understand the main dispute resolution clauses energy industry contracts
- In-depth knowledge of ADR mechanisms
- Have a full awareness of conflict resolution options
- Acquire conflict management skills for avoidance and settlement of energy disputes

## TRAINING METHODOLOGY

- Participants will gain greater understanding of the subject matter through presentations by an experienced international practitioner designed to both inform and broaden the perspectives of the participants. Recent case studies will be reviewed and discussed. Participants will participate in interactive discussions on how to resolve and manage conflicts. Dispute avoidance measures will be explored and analysed.

## ORGANISATIONAL IMPACT

The organisation will benefit by:

- Creating awareness amongst their relevant personnel on different dispute resolution methods available to resolve energy disputes
- Saving costs and management time in resolving disputes by using Alternative Dispute Resolution process
- Providing senior management with options available to deal with energy disputes
- Analysing and strategizing on the best approach to avoiding disputes and managing the disputes once it has arisen

## PERSONAL IMPACT

Attendees will gain by participation in this seminar as a result of:

- Improved understanding of how best disputes can be resolved
- Understanding the overarching legal and pragmatic goals to managing disputes
- Knowing their role in helping to avoid and or manage disputes
- Better prepared to face disputes hands-on and having hands-on skills to deal with difficult issues

- Knowing how ADR can be used to resolve disputes and save on the high legal costs and minimize management time spent on resolving disputes

## WHO SHOULD ATTEND?

- This training course will benefit all levels of personnel involved in resolution of energy industry disputes. It will enable a broad range of disciplines to appreciate and understand the complexities of conflict management and resolution for the energy sector.

This training course is appropriate to a wide range of professionals but will greatly benefit:

- Legal managers, legal counsel
- Commercial and Business managers
- Contracts administrators, and managers
- Commercial, financial and insurance professionals
- Project and General Management

## Course Outline

### Types of Disputes in the Energy Sector

- Overview of the types of energy sector disputes
- State versus state disputes
- Investor–state or state investment disputes.
- Energy Charter Treaty (ECT)
- Company versus company disputes
- Disputes between joint venture participants in contracts
- Disputes between operators and service contractors
- Individual versus company disputes

### Conflicts Arising Under Energy Agreements

- Types of Energy Agreements and Dispute Resolution Mechanisms
- Purchase and Sale of Energy Commodities and/or related Financial Energy Transactions (Standardized Agreements)
- Tolling Transactions/Agreements & Fuel-Supply Transactions/Agreements
- Off-Take and Power Purchase Transactions/Agreements
- Transmission and Transportation Transactions/Agreements
- Operations & Maintenance (O&M) Transactions/Agreements
- Engineering, Procurement and Construction (EPC) Transactions/Agreements

- Energy Project Development Financing Transactions/Agreements
- Traditional Energy Asset Acquisition and Divestiture Transactions/Agreements
- Energy Risk Management Service Transactions/Agreement
- Renewable Energy Transactions/Agreements

## Benefits of ADR in Resolving Energy Disputes

- Types of ADR Processes
- Mediation
- Conciliation
- Arbitration
- Ad-hoc and institutional arbitration
- Venue of arbitration
- Expert determination
- Enforcement of award
- ADR Benefits
- Promotes Creative Solutions
- Promotes Efficient Decision-Making by Regulatory Agencies
- Preserves Relationships
- Promotes Good Business
- Saves Time and Money
- Provides Benefits Even Without Full Settlements



## Analysing Conflicts and Choosing ADR Approaches

- Fit the “Forum to the Fuss”
- ADR Suitability Guide
- Overarching legal, pragmatic goals for managing dispute
- Suitability of the dispute for problems solving
- Potential Benefits of ADR for a particular case

## Dispute Avoidance by Improving Conflict Management Skills & Awareness

- Role of Government / Regulatory Agency
- Knowledge of range of ADR options
- Company personnel expertise in ADR process
- Savings on legal costs and management time
- Preference of dispute resolution mechanisms
- Use of ADR to avoid energy disputes