Certificate in Energy Law and Policy

International Energy Agreements and Dispute Resolution

International Energy Agreements form the backbone of cross-border cooperation in the extraction, transmission, conversion, and consumption of energy resources. The vocabulary surrounding these agreements is extensive, and a clear understanding of each term is essential for both practitioners and scholars. This guide presents the most frequently encountered concepts, explains their legal significance, and illustrates how they operate in real-world contexts. Practical examples and common challenges are included to help learners apply the terminology in negotiations, contract drafting, and dispute resolution.

Treaty – A formal, binding agreement between two or more sovereign states or international organisations. In the energy sector, treaties may establish overarching principles for investment protection, market access, or environmental standards. For instance, the Energy Charter Treaty (ECT) provides a multilateral framework that guarantees non-discriminatory treatment of foreign investors and offers a dispute-settlement mechanism that can be invoked by investors against host states.

Contractual Clause – A specific provision within a contract that allocates rights, duties, or remedies. Energy contracts are rich in specialised clauses that address price adjustments, supply obligations, and termination events. The inclusion of a Force Majeure clause, for example, allows a party to suspend performance when an unforeseen event beyond its control renders execution impossible or commercially impracticable. Understanding the precise wording of such clauses is critical because courts and arbitral tribunals interpret them narrowly.

Force Majeure – An event that is external to the parties, unforeseeable at the time of contract formation, and beyond the control of the affected party. Typical triggers include natural disasters, war, or major regulatory changes. The clause usually requires the affected party to give prompt notice and to mitigate the impact where possible. A common challenge is determining whether a pandemic qualifies as force majeure; the answer often depends on the specific language of the clause and the governing law.

Take-or-Pay – A contractual commitment obligating the buyer to purchase a minimum quantity of energy product, or to pay a predetermined amount regardless of actual take-or-pay. This clause provides the supplier with revenue certainty, while the buyer assumes the risk of demand fluctuations. In practice, disputes arise over the calculation of “minimum take” when the contract is affected by market volatility or regulatory constraints.

Supply Agreement – A contract that outlines the terms under which a supplier provides energy resources—such as crude oil, natural gas, or electricity—to a purchaser. Key elements include volume, price formula, delivery point, quality specifications, and termination rights. The agreement may also incorporate ancillary provisions like Performance Bond requirements, which serve as security for the buyer in case the supplier fails to deliver.

Performance Bond – A guarantee, typically issued by a bank or insurance company, that the supplier will fulfil its contractual obligations. If the supplier defaults, the bond can be called upon to compensate the buyer. The bond's amount is usually a percentage of the contract value and may be released incrementally as performance milestones are met.

Joint Development Agreement – An arrangement whereby two or more parties cooperate to explore, develop, and exploit an energy resource that lies in a shared jurisdiction or in a trans-boundary area. The agreement defines each party's share of costs, risks, and revenues, and often includes a governance structure for decision-making. Joint development is common in offshore oil fields that straddle maritime boundaries, where the United Nations Convention on the Law of the Sea (UNCLOS) provides the legal backdrop for delimiting rights.

Strategic Petroleum Reserve – A government-owned stockpile of crude oil intended to be used in emergencies to stabilize domestic markets. While not a contractual term per se, the reserve influences the design of supply contracts, especially in countries where the reserve is linked to import quotas or price caps. For example, a contract may contain a clause that allows the government to divert a portion of the cargo to the reserve, triggering a price adjustment.

Renewable Energy Certificate – Also known as a green certificate, this instrument represents the environmental attributes of one megawatt-hour of renewable electricity generation. Certificates can be traded separately from the physical electricity, enabling purchasers to meet renewable portfolio standards without directly contracting for the power. The legal status of certificates varies by jurisdiction, and disputes may arise over their authenticity, double counting, or compliance with national targets.

Carbon Pricing – A mechanism that assigns a monetary value to carbon dioxide emissions, either through a carbon tax or an emissions-trading system (ETS). Contracts that involve fossil-fuel generation often incorporate carbon-pricing provisions to allocate the cost of emissions between parties. A typical clause might stipulate that the buyer bears the carbon cost, calculated based on the emissions factor of the supplied fuel.

Feed-in Tariff – A policy tool that guarantees a fixed price for electricity generated from renewable sources for a specified period. The tariff is designed to incentivise investment by providing revenue certainty. Energy contracts that rely on feed-in tariffs must include provisions that address changes in tariff rates, as governments may adjust them in response to fiscal pressures or market developments.

Investment Protection – A set of standards, often embedded in bilateral investment treaties (BITs) or multilateral agreements, that safeguard foreign investors against expropriation, unfair treatment, or discriminatory measures. Core principles include National Treatment and Most-Favoured-Nation (MFN) treatment. Investors may invoke these standards in arbitration when they believe a host state has breached its obligations.

National Treatment – The principle that a host state must treat foreign investors no less favourably than it treats its own domestic investors. In the energy context, this means that a foreign oil company should receive the same tax rates, regulatory approvals, and subsidies as a domestic company. The principle is

often contested in cases involving subsidies that are perceived to favour domestic players.

Most-Favoured-Nation – A clause that obliges a host state to extend to a foreign investor any favourable treatment that it provides to any other foreign investor. For example, if a state offers a lower royalty rate to a new entrant, an existing investor can claim MFN treatment to obtain the same rate. The application of MFN can be complex when the favourable treatment is linked to specific conditions or time-limited incentives.

Arbitration – A consensual dispute-resolution process in which the parties agree to submit their dispute to one or more neutral arbitrators whose decision (the award) is binding. In international energy contracts, arbitration is favoured because it offers neutrality, enforceability under the New York Convention, and flexibility in procedural rules. Common arbitration institutions include the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Settlement of Investment Disputes (ICSID).

ICSID – The International Centre for Settlement of Investment Disputes, a World Bank-affiliated institution that administers arbitration and conciliation of investment disputes between states and foreign investors. The centre's Rules provide a specialised framework for investment-related claims, often involving alleged breaches of treaty-based investment protection. A notable challenge is the limited scope of review on procedural grounds, which can constrain the ability of parties to challenge awards on substantive grounds.

UNCITRAL – The United Nations Commission on International Trade Law, which has drafted the Arbitration Rules that are widely used for commercial disputes, including those arising from energy contracts. The UNCITRAL Rules are praised for their neutrality and adaptability, allowing parties to select a seat, language, and procedural timetable that suit their needs. However, the Rules do not contain a built-in appellate mechanism, which can lead to finality concerns for parties seeking a review of an award.

Mediation – A voluntary, non-binding process in which a neutral third party assists the disputing parties to reach a mutually acceptable settlement. Mediation is increasingly incorporated into energy contracts as a first-step dispute-resolution mechanism, often followed by arbitration if mediation fails. The advantage of mediation lies in its confidentiality and its ability to preserve business relationships. The main limitation is that parties must consent to the outcome; there is no enforceable award unless a settlement agreement is executed.

Expert Determination – A process in which a specialist with technical expertise (e.g., a petroleum engineer) is appointed to resolve a dispute that hinges on technical facts. The expert's decision may be binding or non-binding, depending on the parties' agreement. Expert determination is useful for disputes over measurement, quality, or performance standards, where a court or tribunal might lack the necessary technical understanding. A challenge is ensuring the expert's independence and the enforceability of the decision under the governing law.

Litigation – The resolution of disputes through the court system of a particular jurisdiction. While litigation is less common in international energy contracts due to concerns over bias and enforceability, it can still arise when parties opt for local courts or when a contractual clause specifies court jurisdiction. Litigation

may be unavoidable in cases involving regulatory compliance, criminal matters, or when a state refuses to recognise an arbitral award.

Dispute Settlement Mechanism – The set of procedures outlined in a contract or treaty that governs how disputes will be resolved. A typical mechanism may include a tiered approach: first, negotiation; second, mediation; third, arbitration; and finally, litigation as a last resort. The mechanism also defines the governing law, the seat of arbitration, the language, and the applicable rules. A well-drafted mechanism reduces uncertainty and helps parties manage the costs and time associated with disputes.

Governing Law – The legal system whose substantive rules will be applied to interpret the contract and resolve disputes. Parties often select a neutral jurisdiction, such as English law or New York law, for predictability. The choice of governing law can affect the interpretation of clauses like force majeure, the calculation of damages, and the availability of certain remedies. Misalignment between governing law and the seat of arbitration can create procedural complications.

Seat of Arbitration – The legal jurisdiction where the arbitration is anchored. The seat determines the procedural law that will govern the arbitration, including issues of confidentiality, interim measures, and the enforceability of the award. Common seats for energy disputes include Paris, London, Geneva, and Singapore. Selecting a seat with a supportive legal framework for arbitration is vital to minimise the risk of court interference.

Confidentiality – The protection of the parties' sensitive information from public disclosure. Energy contracts frequently contain confidentiality clauses, and arbitration institutions may offer confidential proceedings. However, the level of confidentiality varies by jurisdiction; some courts may order the publication of awards, while others maintain strict secrecy. Parties must carefully negotiate confidentiality provisions to safeguard commercial secrets.

Sovereign Immunity – The principle that a state cannot be sued in the courts of another state without its consent. Sovereign immunity can impede the enforcement of contractual obligations and arbitral awards against a state. Many investment treaties, including the ECT, include waivers of immunity for disputes arising under the treaty, allowing investors to bring claims before arbitration. Nevertheless, challenges persist when a state invokes immunity to avoid compliance with an award.

Expropriation – The act of a state taking private property, including energy assets, for public use, typically with compensation. Expropriation can be direct (e.g., nationalisation) or indirect (e.g., regulatory measures that effectively deprive the owner of the use of the asset). Investment treaties often require compensation at "fair market value," but disputes arise over the methodology for valuation and whether regulatory actions constitute expropriation.

Compensation – The payment made to an investor when an expropriation occurs. Compensation is usually measured by the market value of the investment at the time of taking, plus interest. In practice, determining the appropriate valuation method—whether discounted cash-flow, comparable transactions, or asset-based—can be contentious, leading to complex arbitration proceedings.

Damages – Monetary compensation awarded for breach of contract. In energy disputes, damages may be

measured by the loss of expected profit, the cost of alternative supply, or the difference between contract price and market price. The principle of foreseeability governs the extent of recoverable damages; parties must demonstrate that the loss was a reasonably foreseeable consequence of the breach.

Liquidated Damages – A pre-agreed amount stipulated in the contract to be payable in the event of a breach. Liquidated damages provide certainty and avoid lengthy damage calculations. However, the amount must be a genuine pre-estimate of loss; if the sum is punitive, a court or tribunal may refuse to enforce it.

Termination Clause – A provision that allows one or both parties to end the contract under specified circumstances, such as prolonged force majeure, material breach, or a change in law. Termination clauses often contain cure periods, notice requirements, and post-termination obligations, such as the return of equipment or the settlement of outstanding payments.

Change-in-Law – A clause that addresses the impact of a new or amended law that adversely affects the contract's economics. The clause may permit the affected party to seek renegotiation, claim compensation, or terminate the agreement. In the energy sector, change-in-law clauses are frequently triggered by the introduction of new environmental regulations, carbon taxes, or sanctions regimes.

Sanctions – Measures imposed by governments or international bodies that restrict trade, investment, or financial transactions with designated entities or jurisdictions. Sanctions can render performance impossible, activate force majeure, or constitute a breach of contract if a party continues to engage with a sanctioned counterpart. The interplay between sanctions and energy contracts is a growing area of risk, especially in geopolitically volatile regions.

Regulatory Approval – The consent required from a government agency to undertake activities such as exploration, construction, or operation of energy facilities. Contracts often contain conditions precedent that make the agreement subject to obtaining the necessary licences. Failure to secure approval can lead to termination or a claim for damages, depending on the allocation of risk in the contract.

Compliance – The act of adhering to applicable laws, regulations, and contractual obligations. In the energy field, compliance includes environmental standards, safety protocols, anti-corruption laws, and reporting requirements. Non-compliance can trigger penalties, loss of licences, and reputational damage, as well as provide grounds for disputes.

Due Diligence – The investigative process undertaken by a party to assess the legal, technical, and commercial aspects of an energy project before entering into a transaction. Due diligence helps identify hidden risks, such as unresolved land disputes, undisclosed liabilities, or pending regulatory actions. The scope and depth of due diligence are often negotiated, with parties agreeing on confidentiality obligations for the information exchanged.

Risk Allocation – The process of assigning specific risks to the party best able to manage them. In energy contracts, risk allocation is reflected in clauses addressing force majeure, change-in-law, performance guarantees, and indemnities. Effective risk allocation reduces uncertainty and aligns incentives, but overly aggressive allocation can lead to disputes if one party feels burdened by unreasonable responsibilities.

Indemnity – A contractual promise by one party to compensate the other for losses arising from specified events, such as third-party claims, environmental damage, or breach of warranties. Indemnities may be limited in scope, capped at a certain amount, or subject to deductibles. Clear drafting of indemnity provisions is essential to avoid ambiguity over the scope of liability.

Warranty – A guarantee that a particular statement or condition is true at the time of contract execution. Warranties in energy contracts often relate to title, ownership of assets, or compliance with applicable laws. Breach of warranty can give rise to a claim for damages or termination, depending on the importance of the warranty to the overall agreement.

Representations – Statements made by a party that induce the other party to enter into the contract. While similar to warranties, representations may be less binding, but they can still form the basis for a claim if they are false and material. In practice, the distinction between representations and warranties is often blurred, leading to litigation over the appropriate remedy.

Security Package – The collection of guarantees, collateral, and other protective measures that a lender or investor requires to secure its exposure in an energy project. A typical security package may include project-level mortgages, assignment of project contracts, and guarantees from the sponsor. The adequacy of the security package is a key consideration in project finance and can affect the cost of capital.

Project Finance – A financing structure where the repayment is based on the cash flows of a specific project rather than the balance sheet of the sponsor. Energy projects, especially large-scale renewable installations, often rely on project finance. The contractual framework for project finance includes a suite of agreements —such as the loan agreement, power purchase agreement (PPA), and construction contract—each containing its own set of specialised terms.

Power Purchase Agreement – A long-term contract between a power generator and a purchaser (often a utility or large consumer) that sets out the price, quantity, and delivery schedule of electricity. PPAs are central to the financing of renewable projects; they provide the revenue certainty needed to secure debt. Key PPA provisions include the price formula (e.g., fixed, indexed, or market-linked), force majeure, and termination rights.

Offtake Agreement – Similar to a PPA, an offtake agreement is a contract in which a buyer commits to purchase a specified quantity of a commodity, such as natural gas or crude oil, from a producer. Offtake agreements are crucial for securing financing, as lenders rely on the offtake commitments to project cash flows. The agreement typically includes take-or-pay, price adjustment, and delivery obligations.

Price Formula – The method used to calculate the price payable under a supply or off-take contract. Price formulas may be fixed, tied to a benchmark (e.g., Brent crude, Henry Hub), or include escalation clauses linked to inflation indices. The choice of price formula influences the contract’s exposure to market volatility and can be a source of dispute if the formula is ambiguous or the benchmark is unavailable.

Benchmark – A reference price used in the calculation of contract prices. In the energy sector, common benchmarks include Brent, WTI, Dubai Crude for oil, and Henry Hub for natural gas. The reliability and transparency of the benchmark are essential; if a benchmark is discontinued, the contract must specify a

replacement mechanism.

Escalation Clause – A provision that adjusts the contract price in response to changes in a specified index, such as inflation, exchange rates, or input costs. Escalation clauses protect parties from eroding purchasing power over long contract durations. However, disputes can arise over the appropriate index, the frequency of adjustments, and whether the escalation applies to the base price or to other components such as transportation costs.

Currency Clause – A provision that determines the currency in which payments will be made and may include mechanisms for dealing with exchange-rate fluctuations. In cross-border energy contracts, parties often use a major currency (e.g., USD, EUR) and may incorporate a currency hedge to mitigate foreign-exchange risk. Failure to address currency risk can lead to significant financial exposure.

Transportation Clause – A term that specifies the mode, route, and responsibilities for moving the energy commodity from the point of production to the point of delivery. The clause may allocate risks of loss, damage, and delay between the parties, often using Incoterms (e.g., FOB, CIF). Understanding the allocation of transportation risk is vital for managing insurance requirements and liability.

Incoterms – A set of internationally recognised trade terms published by the International Chamber of Commerce that define the responsibilities of buyers and sellers for the delivery of goods. In energy contracts, Incoterms such as FOB (Free on Board) and CIF (Cost, Insurance, and Freight) are commonly used. The selection of an Incoterm determines at which point risk passes from seller to buyer.

Insurance – A risk-mitigation tool that provides financial compensation for loss or damage to assets, cargo, or liability. Energy contracts typically require the parties to maintain specific insurance coverage, such as hull and machinery insurance for vessels, property insurance for facilities, and liability insurance for environmental damage. The contract must specify the minimum coverage limits and the parties responsible for obtaining the policies.

Environmental Liability – The legal responsibility for damage caused to the environment, which can arise from spills, emissions, or other adverse impacts of energy operations. Environmental liability clauses allocate responsibility for remediation costs, fines, and third-party claims. Increasing regulatory scrutiny has led to the inclusion of comprehensive environmental indemnities and the requirement for performance bonds to cover potential liabilities.

Third-Party Claim – A claim brought by a party that is not a signatory to the contract, often arising from alleged damage or injury caused by the contractual performance. Energy contracts frequently contain clauses that require the defending party to indemnify the other against third-party claims, subject to certain exclusions. The management of third-party claims is a critical aspect of risk mitigation.

Conflicts of Law – Situations where the laws of two or more jurisdictions may apply to a dispute. International energy contracts often involve multiple legal systems, making conflicts of law analysis essential. The choice of governing law and seat of arbitration helps to narrow the applicable law, but issues such as the recognition of foreign judgments or the enforcement of arbitral awards may still involve conflict-of-law considerations.

Recognition and Enforcement – The process by which a foreign arbitral award is acknowledged and given effect in a domestic jurisdiction. The 1958 New York Convention provides a framework for the enforcement of awards in over 160 states. Common grounds for refusal include public policy, lack of proper notice, or the award exceeding the parties' authority. Understanding the enforcement landscape is crucial for selecting a seat and drafting arbitration clauses.

Public Policy – A principle that allows a state to refuse enforcement of an arbitral award if it is contrary to the essential values or interests of the state. Public policy objections are narrowly construed, but they can be invoked in cases involving national security, environmental protection, or fundamental rights. Parties must anticipate potential public-policy challenges when drafting agreements that may affect sovereign interests.

Inter-Party Dispute – A disagreement that arises between the contracting parties themselves, as opposed to a dispute between a party and the state. Inter-party disputes are typically resolved through the mechanisms stipulated in the contract, such as arbitration or mediation. The distinction is important because state-related disputes may trigger investment-protection claims under international treaties.

State-Investor Dispute – A conflict between a foreign investor and a host state, usually concerning alleged breaches of investment protection standards. State-investor disputes are commonly resolved in investment arbitration, where the investor invokes treaty provisions such as fair and equitable treatment. The outcome can affect the broader investment climate and may lead to policy reforms.

Settlement Agreement – A contract in which parties agree to resolve their dispute without proceeding to a formal award. Settlement agreements are often confidential and may include confidentiality clauses, payment terms, and releases of liability. While settlements provide a quick resolution, they may not address underlying contractual ambiguities, potentially leading to future disputes.

Confidentiality Clause – A provision that obliges the parties to keep certain information private. In energy contracts, confidentiality clauses protect trade secrets, pricing formulas, and technical data. They also apply to dispute-resolution processes, ensuring that arbitration proceedings and awards remain undisclosed unless the parties agree otherwise.

Governing Body – The authority that administers a particular treaty or framework, such as the Energy Charter Secretariat for the ECT. The governing body may provide interpretative guidance, monitor compliance, and facilitate dispute settlement. Interaction with the governing body can be a source of diplomatic resolution before resorting to formal arbitration.

Regulatory Framework – The set of laws, regulations, and policies that govern energy activities within a jurisdiction. The regulatory framework influences the design of contracts, the allocation of risk, and the feasibility of projects. For example, a jurisdiction with a robust renewable-energy incentive scheme may attract more investment, while a volatile regulatory environment may increase the reliance on change-in-law clauses.

Compliance Programme – An internal system that ensures a company adheres to applicable legal and contractual obligations. In the energy sector, compliance programmes often cover anti-bribery, export

controls, and environmental standards. Effective compliance reduces the likelihood of disputes and regulatory sanctions.

Anti-Corruption – Legal rules that prohibit bribery and other corrupt practices. International conventions such as the OECD Anti-Bribery Convention impose obligations on companies operating abroad. Energy contracts routinely contain anti-corruption warranties and representations, and breach of these provisions can result in termination and damages.

Export Controls – Restrictions imposed by a state on the export of certain goods, technology, or services. Energy projects involving advanced equipment, such as high-pressure turbines, may be subject to export-control regimes. Failure to obtain the required licences can trigger force majeure, breach of contract, or even criminal liability.

Sanctions Compliance – The process of ensuring that a company does not engage in prohibited transactions with sanctioned entities or jurisdictions. Sanctions compliance is a critical component of risk management in the energy sector, particularly for companies operating in regions subject to geopolitical tensions. Sanctions can affect contract performance, financing, and insurance coverage.

Force Majeure Event – An occurrence that satisfies the criteria of a force majeure clause, rendering performance impossible or impracticable. Typical examples include earthquakes, floods, wars, and government actions such as embargoes. The event must be beyond the control of the affected party, unforeseeable at the time of contracting, and must be communicated promptly to the other party.

Mitigation – The duty of a party to take reasonable steps to reduce the impact of a breach or an adverse event. In the context of force majeure, the affected party must act to minimise the duration and extent of non-performance. Failure to mitigate can lead to a reduction in damages or a denial of the force-majeure defence.

Notice Requirement – A contractual obligation to inform the other party of a breach, claim, or event within a specified timeframe. Notice requirements are common in termination, force majeure, and change-in-law clauses. Non-compliance with the notice requirement can result in loss of rights, such as the inability to invoke a termination clause.

Remedy – The legal means by which a party can enforce a right or obtain compensation for a breach. Remedies may be monetary (damages), specific performance (court-ordered fulfillment of obligations), or rescission (cancellation of the contract). The choice of remedy depends on the nature of the breach, the parties' expectations, and the enforceability of the remedy.

Specific Performance – An equitable remedy that compels a party to carry out its contractual obligations. In the energy sector, specific performance is rare for supply contracts because the subject matter (e.g., crude oil) may not be available. However, it may be sought for unique assets, such as specialized equipment, where monetary compensation is inadequate.

Rescission – The unwinding of a contract, returning the parties to their pre-contractual positions. Rescission may be pursued when a contract is voidable due to misrepresentation, fraud, or mutual mistake. In practice,

rescission is difficult to achieve for long-term energy contracts, as the parties have typically invested significant resources.

Set-off – The right of a party to offset amounts owed by the other party against amounts it owes. Set-off clauses are often included in supply agreements to allow the buyer to deduct amounts for under-delivered volumes or quality breaches from the payments due to the seller. The clause must specify the conditions under which set-off is permissible.

Assignment – The transfer of contractual rights or obligations to a third party. Energy contracts may restrict assignment to protect the parties from unwanted third-party involvement. However, assignment is commonplace in financing transactions, where lenders may assign their rights under loan agreements to other financiers.

Novation – The substitution of a new contract in place of an existing one, with the consent of all parties. Novation transfers both rights and obligations, effectively creating a new contract. In the energy sector, novation is used when a project changes ownership or when a new operator takes over an existing facility.

Guarantee – A promise by a guarantor to fulfill the obligations of another party if that party defaults. Guarantees are often required from parent companies in project finance to enhance the creditworthiness of the project. The guarantee may be limited to a specific amount and may be subject to conditions such as the occurrence of a default event.

Cross-Default – A clause that triggers a default under one agreement if the party defaults under another related agreement. Cross-default provisions help lenders protect themselves against a deteriorating financial position of the borrower. In energy financing, cross-default may link the loan agreement to the off-take contract, ensuring that a breach in one triggers remedies in the other.

Step-In Rights – Rights that allow a lender or investor to take control of a project's assets or operations in the event of default. Step-in rights are designed to protect the investment and enable the lender to manage the project to preserve cash flow. The exercise of step-in rights often requires the appointment of a manager or the issuance of a management contract.

Material Adverse Change – A clause that allows a party to terminate or renegotiate a contract if a significant negative change occurs that affects the contract's economics. Material adverse change clauses are common in financing agreements and M&A transactions. The threshold for what constitutes a material adverse change is often disputed, leading to litigation or arbitration.

Force Majeure Certificate – A document issued by an independent expert or authority confirming that a force-majeure event has occurred. The certificate can be used to satisfy notice requirements and to provide evidence in dispute resolution. Parties may negotiate the need for such a certificate in the contract to avoid disputes over the existence or impact of the event.

Dispute-Resolution Clause – The part of a contract that sets out the process for resolving disputes, including the choice of mediation, arbitration, or litigation, the governing law, the seat, and the applicable rules. A well-drafted dispute-resolution clause reduces uncertainty and can lower the costs associated with conflict.

The clause may also specify the language of the proceedings and the number of arbitrators.

Arbitral Tribunal – The panel of arbitrators appointed to hear and decide a dispute. The tribunal may consist of a sole arbitrator or a panel of three arbitrators, depending on the agreement. The tribunal's authority includes issuing interim measures, ruling on jurisdiction, and rendering the final award. The independence and impartiality of the tribunal are essential for the legitimacy of the process.

Interim Measure – A temporary order issued by an arbitral tribunal or a court to preserve the status quo, protect assets, or prevent irreparable harm while the dispute is being resolved. Common interim measures in energy disputes include injunctions to halt construction, orders to maintain supply, or the preservation of evidence. The availability of interim measures varies by jurisdiction and the seat of arbitration.

Stay of Proceedings – A court order that suspends the progress of litigation or arbitration. A stay may be granted when an arbitration clause exists, compelling the parties to resolve the dispute through arbitration before proceeding in court. Courts in many jurisdictions respect the principle of competence-courts, which requires that arbitration be the primary forum.

Jurisdiction – The authority of a court or tribunal to hear a case. Jurisdiction can be based on territorial, subject-matter, or personal grounds. In international energy contracts, parties must decide which jurisdiction's courts will have the authority to enforce contractual rights and resolve disputes. The jurisdiction clause is often linked to the seat of arbitration.

Enforceability – The ability of a party to compel compliance with a contract or award. Enforceability is affected by the choice of law, the presence of mandatory provisions, public policy considerations, and the existence of any sovereign immunity claims. Assessing enforceability is a key step in contract negotiation, particularly for cross-border agreements.

Contractual Interpretation – The process by which courts or tribunals determine the meaning of contract terms. Interpretation may involve the ordinary meaning of words, the context, the parties' intent, and the purpose of the contract. In energy disputes, interpretation can be complex due to technical language and industry-specific concepts. The use of expert witnesses is common to aid in interpreting technical provisions.

Expert Witness – An individual with specialised knowledge who provides testimony to assist the tribunal in understanding technical aspects of the dispute. Expert witnesses in energy cases may include petroleum engineers, geologists, economists, or environmental specialists. Their reports and testimony can significantly influence the outcome of the dispute.

Damages Calculation – The method used to quantify monetary compensation for loss. In energy contracts, damages may be calculated based on lost profits, cost of alternative supply, or market price differentials. The choice of methodology must be agreed upon or determined by the tribunal, and it often requires detailed economic analysis.

Lost Profit – A measure of damages that attempts to compensate the claimant for the profit that would have been earned had the breach not occurred. Calculating lost profit involves projecting cash flows,

discounting to present value, and assessing the certainty of those projections. The claimant bears the burden of proof to demonstrate the amount of lost profit with reasonable certainty.

Market Price Differential – The difference between the contract price and the prevailing market price at the time of breach. This measure is often used when the contract price is fixed and the market price fluctuates. The differential can be positive or negative; a negative differential may indicate that the buyer benefited from the breach, potentially reducing damages.

Interest – The addition to the principal sum of damages to compensate for the time value of money. Interest may be simple or compound and is usually calculated from the date of breach until payment. The rate of interest is often specified in the contract or, absent a contractual rate, determined by the tribunal based on prevailing market rates.

Penalty Clause – A provision that imposes a predetermined sum for breach, intended to deter non-performance. Penalty clauses are generally unenforceable in many jurisdictions if the sum is deemed punitive rather than a genuine pre-estimate of loss. Parties should instead rely on liquidated damages clauses that are enforceable if they reflect a reasonable estimate of damages.

Force Majeure Certificate – A document issued by an authoritative body confirming that a force-majeure event has occurred. The certificate can serve as evidence in arbitration and may be required under the contract to trigger the force-majeure clause. The requirement for a certificate helps to prevent abuse of the clause.

Third-Party Beneficiary – A person or entity that,