

2022 ENERGY ARBITRATION SURVEY

Key Takeaway Points for Energy Investors and Host States

On 20 January 2023, the results of a survey on the “Future of International Energy Arbitration”, a project pioneered by Queen Mary University of London (QMUL) in partnership with Pinsent Masons, were published (available [here](#)).

The project was the first of its kind published by the QMUL insofar as its exclusive focus was on the energy sector. This bulletin seeks to draw out key takeaway points for parties who side on either side of the energy arbitration disputing fence – foreign energy investors and the states that play host to foreign energy investments.

1. **What is the most likely cause of future energy arbitration disputes?** The results of the survey cast no doubt that energy arbitration disputes are here to stay. That said, while traditionally the cause of energy arbitration disputes centred on the construction of energy infrastructure, participants in the survey expect a change in the cause of short- to medium-term disputes to that of price volatility. This change mirrors the impact of current geopolitical events on the fluctuating cost of necessary energy inputs (raw materials, energy unit prices), which leads to commercial uncertainty and depleted investment returns.
2. **Who will likely be involved in future energy arbitration disputes?** Among the regions that expect to see the greatest increase in energy-related disputes, Europe came out on top. Not least because Europe stands at the crossroads of an energy crisis, largely as a result of the ongoing Russia-Ukraine crisis. After Europe, Asia, the Middle East and Africa (in that order) will likely see an increase in energy arbitration disputes. The African context is particularly notable, with one survey participant believing that the continent’s political and economic tension with Russia will lead to a search for fossil fuels from elsewhere.
3. **What is the preferred mechanism to resolve future energy arbitration disputes?** Perhaps unsurprisingly, arbitration remained the preferred dispute resolution mechanism for the survey’s participants. In fact, when asked to rank their preferred dispute resolution mechanism by energy sub-sector, arbitration scored highest in every instance. Why? Because of energy users see arbitration as a neutral and enforceable dispute resolution mechanism that benefits from a high level of expertise among arbitrators appointed to arbitral tribunals. Another key reason was that arbitration helps the parties to an energy dispute avoid having to litigate before the domestic courts. Regarding investor-state dispute settlement (as opposed to commercial arbitration), many participants preferred to reserve their view pending the modernisation of the Energy Charter Treaty (for our recent update on that modernisation project, click [here](#)).

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4. **Where will future energy arbitration disputes likely be seated?** Almost half of the survey participants ranked London as the top seat of choice for their energy arbitration disputes, not least because of the stability of its commercial law. Singapore was the second most popular seat, which is perhaps explained by an increasing preference among Asian arbitrating parties to seat their arbitrations in Singapore rather than Hong Kong. In the longer-term, Singapore may indeed replace London as the most preferred seat given its significant geographical position as a trade and shipping hub. This will remain to be seen.
5. **What impact will the “energy transition” continue to have on energy arbitration disputes?** The drive to ‘net zero’ by 2050 is by no means a new addition to the energy investment agenda. While the energy sector will continue to undergo a transition – that is, from a sector previously reliant on fossil fuels to one based on clean energy – geopolitical events may (again) alter the future landscape of energy arbitration disputes, at least in the mid- to short-terms. That is because issues concerning the security of energy supplies arising from the Russia-Ukraine crisis will likely lead to the rejuvenation of previously abandoned fossil fuel projects in favour of green energy projects. Participants of the survey therefore expect fossil fuel projects to be at the centre of future energy arbitration disputes, with a correlative decline (at least for the time being) of disputes relating to green energy industries.
6. **Will economic sanctions resulting from the Russia-Ukraine crisis affect energy arbitration disputes?** In short answer, yes. Most participants in the survey considered that sanctions imposed on actors involved in the energy sector would significantly affect energy arbitration disputes. For one, sanctions would likely impact a party’s ability to perform an energy sector-related contract, thus generating disputes on the contract’s eventual termination or suspension. Supply chain risks were a prevalent concern in that respect. Moreover, a smaller category participants anticipated that such sanctions may result in an increase in disputes concerning bond calls, given banks’ reduced ability to comply with bond calls and restrictions on access for Russian financial institutions to international payment systems.

Some of these results may be surprising, while others may not. Either way, they go to show that energy arbitration disputes will necessarily reflect the complexities of current geopolitical events. It will therefore fall on those advising the parties to such disputes to pay heed to those complexities, while recalling that the parties ultimately want a timely, commercial and enforceable outcome to their arbitration dispute.