

# Example of an Alternative Dispute Resolution Clause

Full Description

## **Negotiations**

The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between a director of each of the Parties with authority to settle the relevant dispute. If the dispute cannot be settled amicably within fourteen (14) days from the date on which either Party has served written notice on the other of the dispute then the remaining provisions of this Clause [ ] shall apply.

## **Arbitration**

In the event of a dispute between the Owner and the Operator (other than a matter to be resolved pursuant to Clause [ ]) concerning the interpretation of any provision of this agreement or the performance of any of the terms of this Agreement, such matter or matters in dispute shall be finally settled: -

- a. under [the Rules of Conciliation and Arbitration of the International Chamber of Commerce];
- b. by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the [Chairman of the International Chamber of Commerce];
- c. the language of the arbitration shall be English; and
- d. the place of the arbitration shall be [ ].

## **Joinder**

(relevant when agreement forms part of a suite of agreements)

If any dispute to be referred to arbitration under this agreement (other than a matter to be resolved pursuant to Clause [ ]) raises issues which are, in the opinion of the Owner, substantially the same as or connected with issues raised in a dispute (a "related dispute") between any of the following entities (and their successors in title and assigns):

- the Contractor;
- any Subcontractor;
- any of the counterparties to the Project Contracts;

which has already been referred to arbitration in accordance with arbitration provisions substantially the same (mutatis mutandis) to this clause then:

(a) the dispute under this contract shall be referred to the arbitrators appointed to determine the related dispute; and

(b) the arbitrators shall have power to make such discretions and awards in the same way as if the rules of [RELEVANT COURTS] as to joining one or more defendants or third parties or consolidating actions were applicable to the Parties and to the arbitrators

or, if the dispute under this Agreement has already been referred to arbitration under this clause, then any related dispute may be joined or consolidated with the dispute under this Agreement.

## **Referral to the Expert**

(may be appropriate for technical/ financial matters)

The following provisions shall apply between the Parties with respect to any matter, difference or dispute which this Agreement provides is to be referred to an Expert:

(a) Where any matter is referred to an Expert in accordance with this Clause [ ], the Expert shall be appointed by the Parties, or in default of agreement upon such appointment within seven (7) days of a Party notifying the other Party of its decision to refer the matter to an Expert, an Expert appointed by

(i) [ ] in relation to disputes of a primarily technical nature; or

(ii) [the President of the Institute of Chartered Accountants in [COUNTRY]] in respect of all other matters.

Failing agreement between the parties as to the nature of the dispute, the Expert shall be appointed by the [President for the time being of the Institute of Chartered Accountants in [COUNTRY]].

(b) The Expert will resolve or settle such matter or dispute in such matter as he shall in his absolute discretion see fit. The Expert shall be requested to reach his decision within thirty (30) days of the matter being referred to him. Any decision of the Expert shall be final and binding on the Parties.

(c) The cost of the Expert in settling or determining such matter or dispute shall be borne equally by the Parties unless the Expert otherwise determines.

## **Performance to Continue During Dispute**

Performance of this Agreement shall continue during arbitration proceedings or any other dispute resolution mechanism pursuant to Clause [ ]. No payment due or payable by the Owner or the Operator shall be withheld on account of a pending reference to arbitration or other dispute resolution mechanism except to the extent that such payment is the subject of such dispute.

## **Further Reading**

[Dispute Settlement in International Trade, Investment and Intellectual Property Course](#) - This course consists of some forty modules and surveys the basic features of the recognition and enforcement of foreign arbitral awards under the New York Convention of 1958 (hereinafter: NYC). The recognition and enforcement proceedings constitute the final stage of any arbitration whenever the arbitral award is not executed voluntarily.

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