

The 2017 AIPN Model Dispute Resolution Agreement

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I. Introduction

Since 1990, the Association of International Petroleum Negotiators (AIPN) has produced model contracts for use in a wide range of agreements related to the international energy industry – joint operating agreements, farmout agreements, gas sales and gas transportation agreements, and liquefied natural gas (LNG) master sales and purchase agreements, to name a few.¹ The AIPN’s objective is to create tools “that serve as the starting point for negotiations and significantly decrease the time it takes to finalize a deal”.² The AIPN forms are widely accepted and used within the industry. This is unsurprising, given that the drafters of these model contracts hail from the AIPN membership, which is comprised of more than 4,000 individuals from more than 110 countries, and includes representatives from host governments, academic institutions, international oil and gas companies, national oil companies and law firm practitioners.

Of the almost 20 AIPN model contracts available, the majority include some form of arbitration clause.³ However, because the AIPN model contracts were developed over time and by different committees, their approach to arbitration varies. In 2002 the AIPN board of directors recognised the need to provide users with a model for the arbitration agreement itself to reconcile the various approaches.⁴ To that end, the board formed a committee to draft a model dispute resolution agreement.⁵ The committee

¹ AIPN, History, available at www.aipn.org/about-aipn/history/.

² AIPN, Model Contracts, available at www.aipn.org/model-contracts/.

³ See, for example, AIPN 2002 Model Form Joint Operating Agreement in Oil and Gas Joint Ventures, Article 18; 2006 AIPN Model Contract Gas Sales Agreement, Article 23; 2006 AIPN Model Form International Unitisation and Unit Operating Agreement, Article 20; 2012 AIPN Model Contract Master LNG Sale and Purchase Agreement, Article 15; 2014 AIPN Model Unconventional Resource Operating Agreement, Article 18.

⁴ 2004 Model International Dispute Resolution Agreement, Guidance Notes at 2.

⁵ *Id.*

produced the 2004 AIPN Model International Dispute Resolution Agreement ('2004 clause'), the goal of which was to facilitate the "fair, speedy, efficient, and cost effective resolution of disputes".⁶

While the 2004 AIPN Model International Dispute Resolution Agreement has been lauded as providing "good precedents for international energy agreements and some excellent reference works for drafting dispute resolution clauses",⁷ arbitration law and procedure has evolved since 2004. In recent years, arbitral institutions have amended their rules and adopted measures to promote efficiency and to address common concerns in international arbitration. For example, in October 2016 the London Court of International Arbitration (LCIA) adopted new rules on the appointment of emergency and replacement arbitrators. In 2016 and 2017 the Singapore International Arbitration Centre (SIAC), the United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce (ICC) released new rules giving parties the option of applying for expedited procedures.

While arbitral institutions were adopting amendments to the arbitral procedure, the AIPN formed a new committee to update the 2004 clause. Over a period of many months, the AIPN drafting committee obtained input from a broad range of international arbitration specialists, transactional lawyers and experts.⁸ Their work culminated in the 2017 Model Dispute Resolution Agreement (MDRA), with a greatly expanded menu of alternative and optional provisions designed to address various scenarios encountered by contract negotiators and to provide guidance as to when particular provisions may be appropriate. Along with the 2017 MDRA, the committee produced Guidance Notes containing additional background and explanatory information that detail the circumstances in which some provisions should be considered. The overall objective is to provide negotiators with "maximum flexibility" in drafting the dispute resolution provisions.

The 2017 MDRA is more comprehensive and much heftier than its 2004 predecessor in at least three ways. First, it is prepared in a different format, with greater detail throughout. Second, it contains

⁶ 2017 AIPN Model Dispute Resolution Agreement, Guidance Notes at 2.

⁷ Tim Martin, *International Dispute Resolution*, Independent Petroleum Assoc of Am 5 (2011).

⁸ The 2017 committee was chaired by Tim Martin and Jennifer L Price. The 2017 model AIPN clause may be downloaded from the AIPN website at www.aipn.org/forms/store/ProductFormPublic/international-dispute-resolution-agreement.

more detailed notes as to how to apply its provisions. And third, it contains more ‘alternative’ provisions, with explanations as to when they should be considered for use. Many matters that the 2004 clause left the various sets of arbitration rules to supplement are now delineated in the 2017 MDRA. To borrow a food-service metaphor, issues that were formerly part of a ‘combo’ are now ‘a la carte’, providing greater flexibility in drafting the clause.

The drafters of the 2017 MDRA undoubtedly recognised that a well-drafted arbitration clause facilitates a more efficient arbitration by reducing the likelihood of litigation and avoiding costly and time-consuming disputes over the clause itself. Indeed, the Guidance Notes to the 2017 MDRA emphasise that a clearly drafted arbitration clause is essential to give effect to the parties’ intent to use arbitration for dispute resolution and to avoid court intervention.⁹

This chapter explains the application and significance of key components of the 2017 MDRA. Section 2 offers an overview of the various dispute resolution options and alternatives; sections 3 to 8 explore in greater detail the various elements of the model arbitration agreement and expand upon various points that the contracting parties should consider; and section 9 addresses the role of expert determination in international dispute settlement and international arbitration.

⁹ 2017 AIPN Model Dispute Resolution Agreement, Guidance Notes at 13.