

A LEADING INTERNATIONAL DISPUTE RESOLUTION TEMPLATE

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There are recent revisions to a leading and widely recognized model international dispute resolution agreement along with its accompanying guidance notes. These revised materials, which have just been published, were updated to incorporate the best and latest provisions from the dispute resolution world. The template and guidance notes provide a useful tool in drafting dispute clauses and managing multi-jurisdictional disputes.

A newly revised template for dispute resolution clauses in international agreements has just been published. It was produced by the international oil and gas industry, but can be easily used for the dispute resolution provisions in any type of agreement involving parties from different countries and jurisdictions. The sponsoring organization is the Association of International Petroleum Negotiators (“AIPN”), which has more than 4,200 members in more than 110 countries that represent international oil and gas companies, governments, law firms, and academic institutions.

The AIPN published its first Model Dispute Resolution Agreement (“**Model DR Agreement**”) in 2004. It was successfully used for many years by international oil and gas companies in their agreements and by the AIPN in its model contracts, which are in turn widely used in the international industry. The revised versions of the Model DR Agreement and its accompanying guidance notes (“**Guidance Notes**”) are now available.

A drafting committee of approximately 75 dispute and transactional lawyers and experts was formed. The committee held numerous meetings over 2015 and 2016 in various global venues to discuss the most appropriate provisions to include. It also conducted an industry survey to get users’ input and provided a number of presentations explaining the objectives of this latest version of the Model DR Agreement.

Before commencing the drafting of the second version, the committee discussed and issued guidelines to establish the goals and parameters for the revision. Once the committee had agreed upon its goals and guidelines, it began drafting. The committee completed four drafts of the Model DR Agreement and three drafts of the Guidance Notes before the final versions were approved.

The Model DR Agreement emphasizes international arbitration as the primary method of dispute resolution. To ensure maximum flexibility in drafting dispute resolution clauses, the Model DR Agreement provides three basic approaches: i) a short and simple arbitration clause, ii) a more detailed

arbitration agreement consisting of the essential elements of an enforceable agreement to arbitrate, with a variety of options and alternatives to fit the nature of the transaction or project and the special concerns of the parties, and iii) a multi-step dispute resolution process that culminates with arbitration for a binding decision. To provide complete flexibility, the alternatives of expert determination and litigation in the courts are also included.

These dispute resolution provisions can serve a number of purposes. They can be i) inserted into international agreements, ii) used as a stand-alone master or umbrella dispute resolution agreement, to be incorporated by reference into various, related contracts, or iii) used as a submission agreement by parties after a dispute arises.

The drafting committee struck a balance between the complexities of international arbitration law and the need to provide model clauses that parties can use in a straightforward, practical and effective manner. The committee also took into consideration the impact of using different governing laws, different cultures and different legal traditions in resolving complex disputes, including the common law, civil law and *Shari'ah*. To meet all these objectives, the committee provided a reasonable range of alternatives and options on major issues that were identified in its survey and discussion groups.

The result is a lengthy and complex Model DR Agreement, which runs to more than 20 pages covering most situations that parties will encounter in their international transactions and agreements. Even though the Model DR Agreement is easily navigable with a table of contents, the many choices it offers and the interdependence of several of the choices provided could lead to confusion for the novice. Therefore, anyone relying on these provisions should proceed with care, bearing in mind that simplicity and brevity are always best when drafting dispute resolution provisions. If parties wish to minimize the length and complexity of their dispute resolution clause, they would be best served by using the short, simple arbitration clause provided at the beginning of the Model DR Agreement.

In addition to the Model DR Agreement, the drafting committee provided a detailed set of Guidance Notes, which guide the novice (and even the more experienced) drafter in using the Model DR Agreement. The Guidance Notes provide a clear explanation of the choices parties can make, along with providing the context and impact of each component. The Guidance Notes are packed with nearly 60 pages of detailed information, including references to the leading textbooks and articles on international arbitration.

The combination of the Model DR Agreement and Guidance Notes provides a useful tool to properly draft and manage any dispute that arises and to have final awards recognized and enforced in jurisdictions around the world.

Copies of the Model DR Agreement and Guidance Notes can be obtained from Tim Martin, either at his website: www.timmartin.ca or by directly contacting him at tim@timmartin.ca

Tim Martin of Calgary is a Fellow and Chartered Arbitrator of the CIArb with extensive international experience as an arbitrator, mediator, expert and counsel. He has nearly 40 years of experience in the international energy and infrastructure industries where he was general counsel, country manager, finance director, commercial manager and economist, working in more than 50 countries on some of the largest energy projects in the world. Tim Martin and Jennifer Price of Houston co-chaired the revision of the Model DR Agreement over a nearly two-year period.