

INDUSTRY INSIGHTS ISSUE 5

Electricity & Renewables Arbitration Report

December 2022
A Report by Jus Mundi



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Foreword

This Report is part of a series of industry-focused arbitration reports edited by [Jus Mundi](#). Within each issue, we examine the extensive international arbitration data available on our platform to give you data-backed insights into arbitration in a specific economic sector.

In this issue, we wired into our en-lightening data available as of August 2022 to explore the electricity market & renewable energy industry. Due to the prevalence of confidentiality in arbitration, we cannot be exhaustive and include every existing electricity & renewables arbitration case document in our analysis. Still, Jus Mundi is proud to have the most comprehensive database in international arbitration, both in investor-State and commercial arbitration. As of November 2022, **over 60,000 case documents** are freely available on our platform, which is continuously updated for the most thorough legal research possible.

We collect data using artificial intelligence through local public resources and open sources. We also have partnerships with major institutions — such as the [ICC](#), [AAA-ICDR](#), [HKIAC](#), [CBMA](#), and [EDAC](#) — as well as collaborative partnerships with leading organizations — such as the [IBA](#), which receives arbitral awards from various contributors globally, the [CEA](#), and the [UAA](#). These partnerships enable us to give you exclusive insights into the diverse commercial arbitration landscape.

In each Report, we present a unique overview of arbitral institutions, the key actors involved, and exclusive statistics in a specific industry. In addition, to bring you a range of enlightening perspectives, we have



included contributions from leading professionals from around the world, including lawyers, experts, and arbitral institution representatives, who explore how disputes in the renewable energy industry are developing and what trends are emerging in the electricity sector. Finally, we provided a list of electricity & renewables arbitration cases filed in the year, which are available on our database and can be found in [Annex 1](#).

Jus Mundi would like to thank all the contributors for their assistance in producing this issue.

We hope you enjoy our complimentary Report and learn from the data available on our platform.

You may also download our previous reports on:

- [Maritime Arbitration](#),
- [Mining Arbitration](#),
- [Oil & Gas Arbitration](#), and
- [Construction Arbitration](#).

Introduction

Electricity & renewable energy projects are typically capital-intensive, long-term, and complex. In broad terms, these projects' life cycle goes from the initial concept phase, to the design and engineering, construction, operational and maintenance phases, supply as well as potentially decommissioning. Disputes can arise at any stage.

Typical claims can arise out of:

- additional payment and extension of time demands due to alleged scope changes;
- delays due to unexpected ground conditions, material shortages, adverse weather or other factors; and
- usual contractual issues, such as unfit performance, defects, etc.

For instance, in the offshore wind sector, adverse weather can be the cause of a particular risk that often leads to disputes.

Read more about the [particular risks of offshore wind farms projects](#) in the [Em-Powering Perspectives in Electricity & Renewables Arbitration](#) section of this Report.

Price review clauses have also been a major cause for disputes, especially in power purchase agreements (“PPAs”). The importance of the governing law of these contracts cannot be overstated, as mentioned in [Governing Law: A Game Changer in Energy Price-Review Disputes](#) in the [Em-Powering Perspectives in Electricity & Renewables Arbitration](#) section of

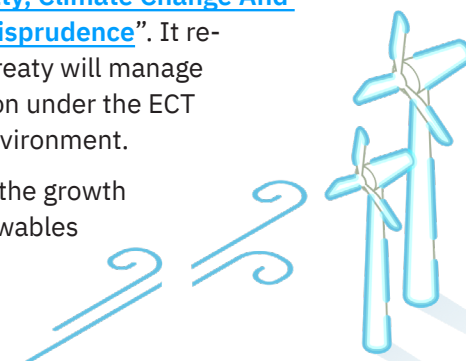
this Report.

In investor-State arbitration, however, regulatory disputes are the most common since the industry tends to be heavily regulated. In Europe especially, investment in renewable energy was particularly encouraged until regulatory changes cutting down incentives led to a number of arbitrations.

So much is currently bearing on global energy investment that the number of arbitrations in the field is bound to explode: high fuel prices, economic uncertainty, energy security concerns, climate imperatives, and the Russian-Ukraine conflict are also likely to lead to further investment in renewable energies.

The [Energy Charter Treaty \(ECT\)](#) – under which most electricity & renewables arbitrations are brought – is also currently undergoing a reform to modernize it and address public criticism that the Treaty impedes the clean energy transition. As they currently stands, the ECT’s environmental provisions are virtually never referred to by parties or arbitral tribunals in investor-State arbitrations, according to the 2022 Climate Change Counsel report entitled “[The Energy Charter Treaty, Climate Change And Clean Energy Transition: A Study of the Jurisprudence](#)”. It remains to be seen whether the modernized Treaty will manage to balance the rights of investors to protection under the ECT and the rights of States to regulate on the environment.

All of these elements are bound to maintain the growth observed in the number of electricity & renewables arbitrations.



Data-Backed Trendspotting in Renewable Energy

The [2022 World Energy Investment Report](#) sheds some light on the state of the renewable energy sector, which helps draw conclusions about the consequences for arbitration in the field.

While investment in renewable energies remained steady between 2011 and 2015, since then and likely due to the adoption of the [Paris Agreement](#), investment in fossil fuels has decreased while it increased in renewable power. As a reminder, the Paris Agreement is a legally binding international treaty on climate change adopted by 194 countries (and the European Union).

Renewables are set to remain the number one power sector category for investment in 2022. Since 2021, the solar photovoltaics (“PV”) subsector has received the most investment within the power sector and comprises nearly half of all renewables investment. Together, solar PV and wind account for more than 80% of total investment in renewables globally.

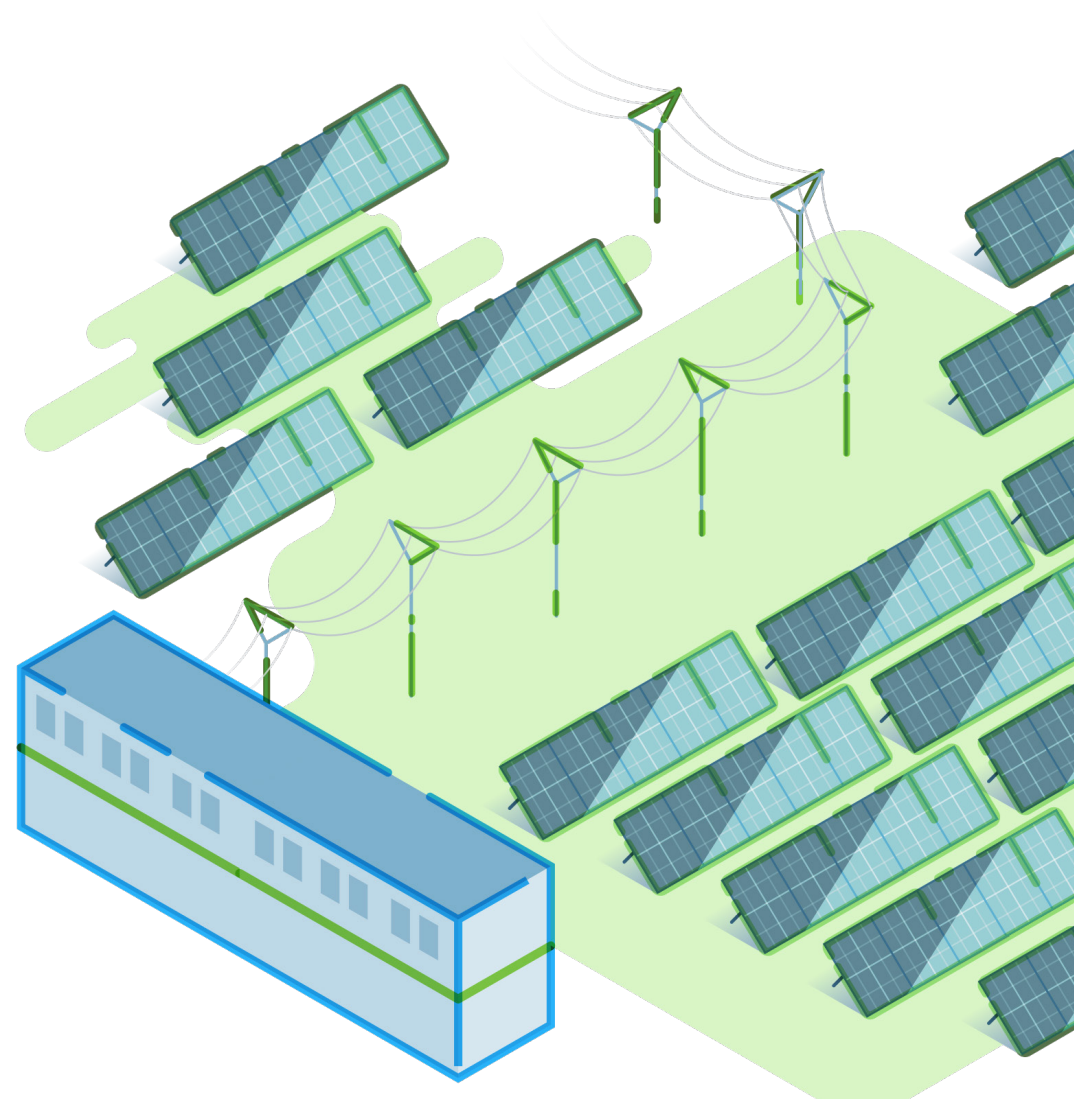
Inevitably, the increased investments in the electricity & renewables sectors led to an increase in related disputes, and especially in arbitrations.

The private sector accounts for over 60% of all investments made in renewables. That being said, governments have been, for the most part, providing strong policy support, which has been critical in stimulating private investment in the sector.

The dichotomy between both also led to numerous investor-State arbitrations: the Electric Power and Other Energies sector (as defined by the [2022 World Energy Investment Report](#)) accounts for 24% of the new cases registered before [ICSID](#) in the 2022 fiscal year.

As is well-known, the general trend in ISDS cases is for developing nations to be the most frequent respondents.

However, renewable energy cases are in stark contrast since they are mostly brought against developed countries.



THE CURRENT STATE OF PLAY: RENEWABLE ENERGY COMPANIES ARE MAKING EXTENSIVE USE OF INVESTMENT TREATY ARBITRATION

As part of efforts to address climate change, since the late 1990s, States have been implementing regulations to incentivise investment in renewable technologies and low carbon energy production. As a consequence of changes made to some of those regulatory measures, there have been a number of investor-State dispute settlement (“**ISDS**”) claims against States. A number of these cases have concerned reductions to the incentives provided to investors to develop renewable energy projects. It has been reported that [Spain](#) has had over 50 ISDS claims brought against it concerning climate change regulations. [Italy](#), [the Czech Republic](#), [Romania](#), and to a lesser extent, [Germany](#) have also been the target of multiple climate change related ISDS claims.

In relation to [Spain](#), a number of these cases arose from the State’s removal of the incentives it had established to attract investment in solar energy projects. As a result, there have been multiple claims against Spain before [ICSID](#) and the [SCC](#) under the [Energy Charter Treaty](#) (“**ECT**”). Cases have been decided in favour of both the claimants and the State, and many are still pending. Claims have generally been brought under article 10 of the [ECT](#) for a failure to provide stable, equitable, favourable, and transparent conditions, as well as a breach of the [Fair and Equitable Treatment](#) (“**FET**”) standard.

For example, in favour of claimants (involving seven Luxembourg, Dutch and Spanish companies) is [Watkins Holdings Sàrl and others v Kingdom of Spain](#), ICSID Case No. ARB/15/44 where, in an [award](#) dated 21 January 2020, the tribunal awarded EUR 77 million plus interest for a violation of the [FET](#) standard.



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The majority of the tribunal held that the modification of the renewable energy incentives scheme frustrated the investors’ [legitimate expectations](#), lacked [transparency](#), was [unreasonable](#) and [disproportionate](#).

An example of a case in favour of the State (involving nine German investors) is [Stadtwerke München GmbH, RWE Innogy GmbH, and others v Kingdom of Spain](#), ICSID Case No. ARB/15/1, where the tribunal (in an [award](#) rendered on 2 December 2019) dismissed the claimants’ claims finding, among other things, that the renewable incentives regime [at the time](#) of the investment did not create any [legitimate expectation](#) of legal stability. The tribunal found that the investor could only legitimately expect to obtain a reasonable return.

In relation to Italy, the government introduced incentives for the production of renewable energy in the mid-2000s. However, in 2014, Italy changed course and adopted a government decree to reduce the financial burden that the incentive regime had on the State and consumers. As a result, at least 13 claimants have initiated [ECT](#) claims against Italy. For example, a Danish renewables company and two Luxembourg entities brought a claim in [Greentech Energy Systems A/S, et al v. Italian Republic, SCC Case No. V 2015/095](#). In an [award](#) rendered on 23 December 2018, the majority of the tribunal found in favour of the

investors, holding that Italy's reduction of the incentive tariffs failed to accord [FET](#) to the claimants and impaired the investments by [unreasonable measures](#).

Romania has also been the respondent in recent claims as a result of regulatory changes to its green certificates market in 2017. Following Romania's changes, a collective action against the State was brought by a group of 10 claimants in June 2018 (including Austrian, German, Dutch and Cypriot entities) in [LSG Building Solutions GmbH and others v. Romania](#), ICSID Case No. ARB/18/19. The case is pending.

More recently, another collective case was commenced at ICSID in September 2020 against Romania in [Fin.Doc S.r.l. and others v. Romania](#), ICSID Case No. ARB/20/35. In that case, a group of 44 companies and individuals from [Italy](#), [Greece](#), [Luxembourg](#), [Germany](#), [Turkey](#), the [Czech Republic](#) and [Cyprus](#) have brought claims against Romania under the [ECT](#) in relation to solar power projects.

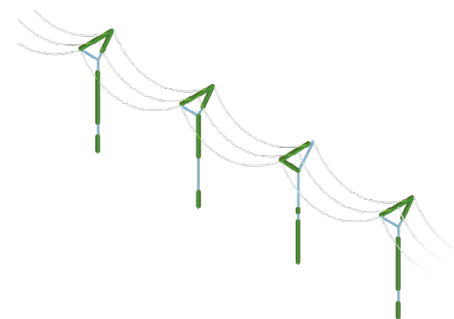
These are just a few examples of how investors in the renewable energy sector, increasingly through claims involving multiple claimants, have used investment treaty arbitration to challenge the actions of States which have modified their regulatory frameworks designed to encourage investment in renewable energy.

Extract from the article: "[Climate change and investment treaty arbitration: a balancing act for States](#)" published on [Jus Mundi's Blog](#) on Nov. 8, 2021, as part of our publication partnership with [London Very Young Arbitration Practitioners \(London VYAP\)](#).

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Economic Landscape of Commercial Electricity & Renewables Arbitration & its Future



Berceste Elif Duranay

Founding Partner - **Duranay Law**
Secretary General - [EDAC](#)

A General Outlook

Global response to climate change has been accelerating the demand for renewable energy production for years. Accordingly, the number of renewable energy projects has been boosted by responsible investors and thanks to various kinds of incentives granted by governments. Additionally, the demand for renewable energy has come out on top, especially after the global energy crisis

which has been ongoing since the first quarter of 2022. Considering this huge demand and the net zero target by 2050, investments in renewable energy and green energy technologies have gained momentum to reduce the carbon footprint and ensure energy supply security.

According to the [World Energy Investment 2022 Report](#) of the International Energy Agency, global energy investment is expected to increase by 8% in 2022 and reach USD 2.4 trillion. It is anticipated that a significant portion of this increase will come mainly from clean energy investments. Moreover, there is rapid growth in **emerging technologies** such as batteries, hydrogen, carbon capture, and storage. The report indicates that investment in battery energy storage alone is expected to be more than double and reach almost USD 20 billion by the end of 2022. These assumptions are not surprising, considering the logic and challenges behind the operation of the electricity market and the net zero target.

Equilibrium in the electricity market is essential for energy access and efficiency. Thus, the production and consumption within an electrical grid should always be balanced. Although **renewable energy investments** are necessary and inevitable, they are, for now, unreliable in stabilising the electricity supply and demand. Without sunlight and wind, solar and wind energy projects cannot produce electricity. Since the existence of either is not under the control of humankind, unpredictable weather

conditions cause fluctuations in the grid system. Furthermore, as a result of the trend to invest in renewables, the number of renewable energy projects has increased. This increase only causes more fluctuations in the electricity market. Within this cycle, there should be more investment in smart grids, electricity storage, and other related technologies to ensure a stable electricity market.

In addition to the need for a stable electricity market, there have been other new investment trends, mainly thanks to the net zero by 2050 target. One of the most important reflections of this transformation is based on the policy of countries that have decided to move towards a **decarbonised transport system**. For example, many car manufacturers have committed to switching production strategies to only produce electric vehicles by 2030. Such a change has also created an investment trend in batteries and charge stations. Besides, governments and companies are investing large sums of money in carbon capture, as well as utilisation and storage (CCUS) technologies. Basically, the technology captures CO₂, compresses and transports it into deep geological formations, and stores it permanently. The biggest fossil fuel companies are among the investors in this sector, and they aim to mostly generate cash from CCUS in future decades.

In sum, the share of renewables in the global energy market will continue to increase, likely leading to more renewable energy disputes than ever. However, emerging technologies and new investment trends signal that we may see different objects and types of disputes in investment and commercial arbitration in the near future.

What's Next in Electricity & Renewables Arbitration?

Anyone playing a part in the energy arbitration practice and the energy industry knows that electricity and renewable projects are complex by nature and require technological know-how. Moreover, as they are long-

term projects, they are capital intensive, generally involving multiple parties from different jurisdictions and various phases. Especially after the evolution of green energy technologies, which require specific raw materials, components, and industrial production, the arbitration sector can expect new objects and new types of disputes. Considering these forecasts, some of the main disputes that are to be expected in the future are likely to comprise:

1. Development Phase Disputes: All projects and technologies have a development phase. It is followed by construction or production. During the development of a technology or a project, a certain milestone needs to be achieved. For example, if it is about an energy storage project, regulatory framework, technical specifications, and commercial viability need reviewing. The project should then be construction-ready within a given time. All parties involved in these steps are potential parties to a dispute in case of non-compliance with the regulatory or technical standards, including design requirements.

2. Construction Phase Disputes: Every electricity and renewable energy project needs an infrastructural and/or site construction within the project area to connect it to the grid system or to make it ready to install components such as charge stations, wind turbines, and solar panels. For instance, hydropower plant projects can require a more extensive construction phase. This means that depending on a party's involvement in the energy technologies supply chain, a production facility could be built, or an infrastructural construction service could be sold to the buyer. Therefore, a construction phase is inevitable and can potentially risk generating construction disputes arising out of typical claims such as delay, damage, and loss of profit.

3. Disputes Relating to Installation or Technology Used: During the



installation phase of an energy project, some problems with the assembly of the components may arise, potentially resulting in ineffectiveness in the project. Moreover, technologies used in electricity and renewable projects can be new and their efficiency is unproven. In this regard, there exists a risk of disappointed expectations, especially regarding productivity and effectiveness. In such instances, the installation or technology company may face contractual claims.

- 4. Supply Disputes:** It is well-known that, in the current global economic and energy crisis, oil and gas as well as raw material supply problems are common due to many commercial and political disruptions all around the world. This state has resulted in conflicts over supply contracts, notably in terms of their payment or purchase conditions. There is also a sharp increase in electricity prices. As a result of these developments, disputes between suppliers and buyers of power purchase agreements, oil and gas supply contracts, and raw material supply contracts of energy technologies are becoming more likely and already affecting the electricity market.

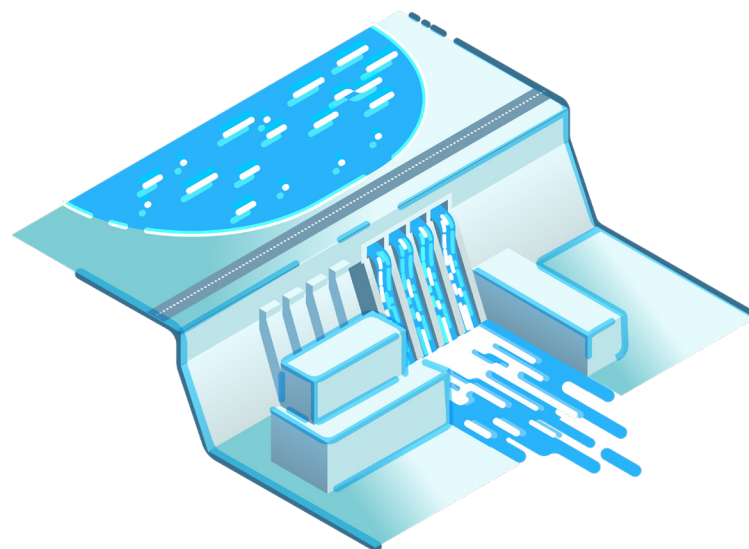
Is There a Need for Specialised Forums?

As stated above, energy projects are cost-intensive and complex. They require extensive know-how, technology, industrial production, and construction. Arbitration generally has been chosen by the parties as the dispute resolution mechanism of choice, but sectoral knowledge is also important to resolve these disputes efficiently. Particularly, the appointment of experienced arbitrators and experts who are aware of the potential effects of such disputes, at the beginning of the arbitral process, is key for an expedited and effective resolution. Therefore, specialised arbitration centres such as the [Energy Disputes Arbitration Center \(EDAC\)](#) are expected to play a crucial role in the resolution of energy disputes in the future.

ABOUT THE AUTHOR

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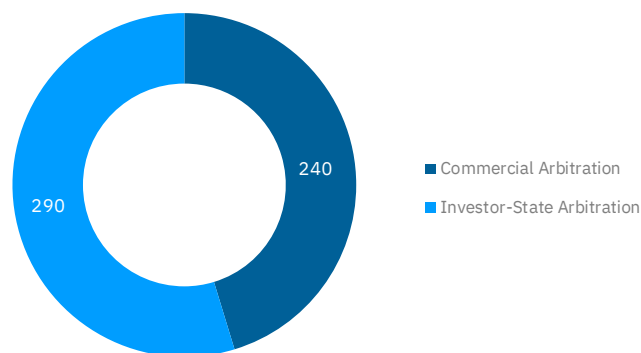
She obtained her LL.B. from Bilkent University and holds an LL.M in Comparative and International Dispute Resolution from the Queen Mary University of London. She has worked in law firms serving many local and foreign energy and mining companies, and has extensive experience in international dispute resolution. She has also served as the in-house legal counsel of one of the biggest conglomerates in Turkey, consisting of companies operating in the petroleum (upstream) and gold mining sectors, among other industries.



Electricity & Renewables Arbitration Cases on Jus Mundi

*For this Report, we only surveyed the data you can access, double-check, and monitor on Jus Mundi. Overall, we have found **530** arbitration cases available for electricity and/or renewable energy disputes in our multilingual search engine, of which **240** are **commercial arbitration cases** and **290** investment arbitration cases.*

Proportion of commercial and investor-State arbitrations in Electricity & Renewables Arbitration overall



To find cases in the field, simply use our Economic sector filter for [Electricity, gas, steam and air conditioning supply \(energy\)](#).

This economic sector filter, which is the basis for the data presented in this Report, does not only include data on electricity and renewables arbitrations but also gas supply arbitrations. However, we have focused our analysis on the electricity & renewables-related data.

Our Data-Backed Insights

The data of the cases in Annex 1 – which comprises arbitration cases introduced in 2021 and up to August 2022 according to our database – proficiently illustrates some of the general trends in electricity & renewables arbitration.

Out of 45 cases, **the most prominently represented party nationality** is the **Spanish** one, closely followed by parties from the **United States**.

The proportion of commercial and investor-State arbitrations is somewhat similar to the general trend observed from the data available on our platform: investor-State arbitration dominates but by a short margin, and [ICSID](#) is the main arbitral institution in the field. That being said, due to the confidential nature of commercial arbitration, there are certainly many more commercial disputes in the field which are not yet available on Jus Mundi.

In most cases where the information is available, claims were brought under the [Energy Charter Treaty \(ECT\)](#).

Evolution of the number of Electricity & Renewables Arbitration cases filed between 2006 & 2021

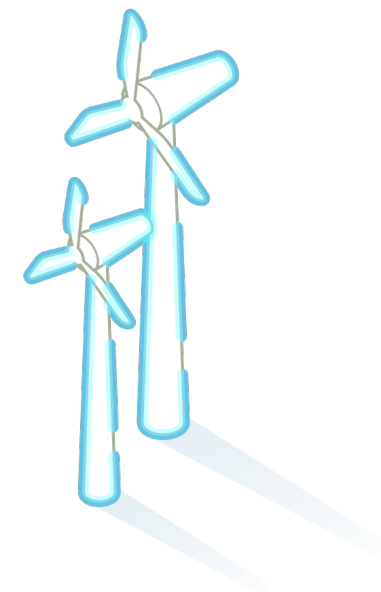
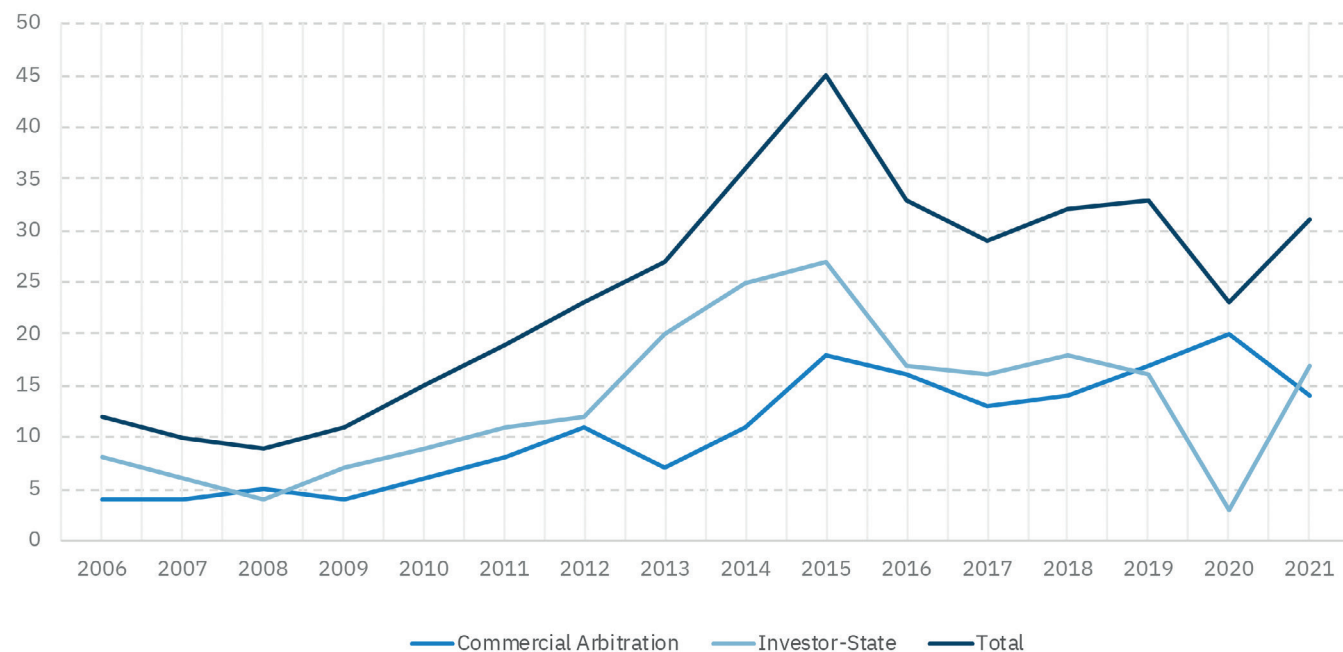
The number of arbitration cases filed over the years has exponentially increased. Starting in the 2010s, when renewables investment started taking off, cases increased particularly in 2015-2016, during the negotiations and adoption of the [Paris Agreement](#).

Read about the Paris Agreement and its impact on arbitration in the ICC publication: [Dispute Resolution and Climate Change: The Paris Agreement and Beyond](#), ICC, 2017, available in the [ICC Dispute Resolution Library](#) on Jus Mundi.



TOOLTIP

Try Jus Mundi's **Monitoring & Alerts** feature to get updates on cases, search, arbitrators and arbitration practitioners, or even parties. Legal intelligence automated!

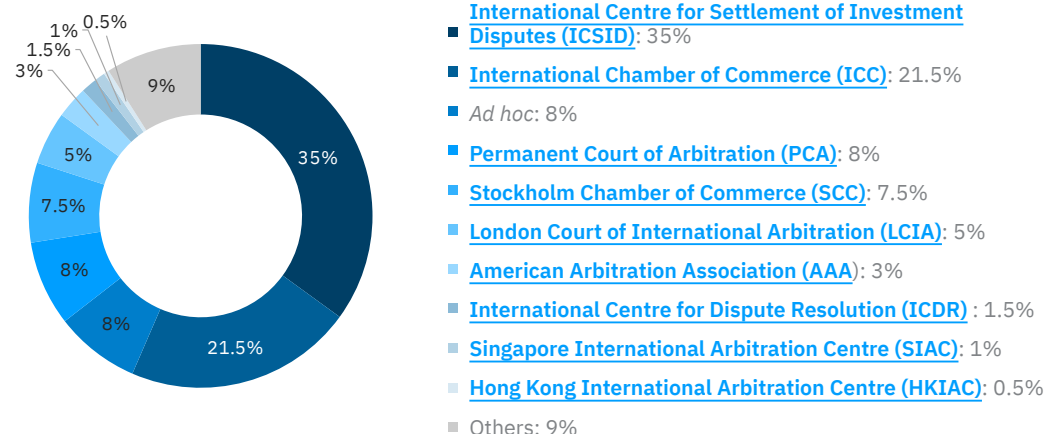


Most Selected Arbitration Institutions

We looked at all the electricity & renewable energy arbitration cases available on Jus Mundi to gather data showing the popularity of each arbitral institution in electricity & renewables arbitration.

While parties opted for various local and international arbitration institutions for their electricity & renewables disputes, a survey of our data revealed **22 main arbitral institutions** that have administered electricity & renewables arbitrations over the years. Although not exactly rarely used, ad hoc arbitration does not seem to play a major role in electricity or renewables disputes.

Most selected arbitral institutions overall in Electricity & Renewables Arbitration - according to our database as of August 2022 -



TOOLTIP

Try our institutions and arbitration rules filters. Use [CiteMap](#) for rules of arbitration to find related jurisprudence.

Key Takeaways

- It is no surprise that [International Centre for Settlement of Investment Disputes \(ICSID\)](#) is the **primary arbitral institution in electricity & renewables arbitration**, with **186 cases** in the sector available on Jus Mundi.

The statistics presented in [ICSID Annual Reports](#) give an insight into the developments of the field in investment arbitration and perfectly illustrate the new trends discussed in the [Introduction](#) and [Economic Landscape of Commercial Electricity & Renewables Arbitration & its Future](#) sections.

Historically, the extractive (*i.e.*, Oil, Gas & Mining) and energy (*i.e.*, Electric Power & Other Energy) sectors as defined by [ICSID Annual Reports](#) have been contenders, almost every single year in the last decade, for the most cases registered with ICSID in a given fiscal year.

However, since 2015, the Electric Power & Other Energies sector has often come on top (except during the COVID-19 pandemic

years). This could be partially explained by the adoption of the [Paris Agreement](#) in 2015.

Since then, many countries have adopted amendments or rollbacks of governmental policies or legislations to meet their climate-change targets. Consequently, they have incurred an increase in renewable energy investment claims mainly linked to changes in feed-in tariffs and incentives, notably in Europe (e.g., the infamous Spanish renewable energy saga).

This year, ICSID reports that 24% of cases registered in the fiscal year 2022 involved Electric Power and Other Energies, which is more cases than in any other economic sector, including Oil, Gas & Mining. This is a sharp increase from last year: only 14% of cases in the electric power and other energies sector were registered in the 2021 fiscal year.

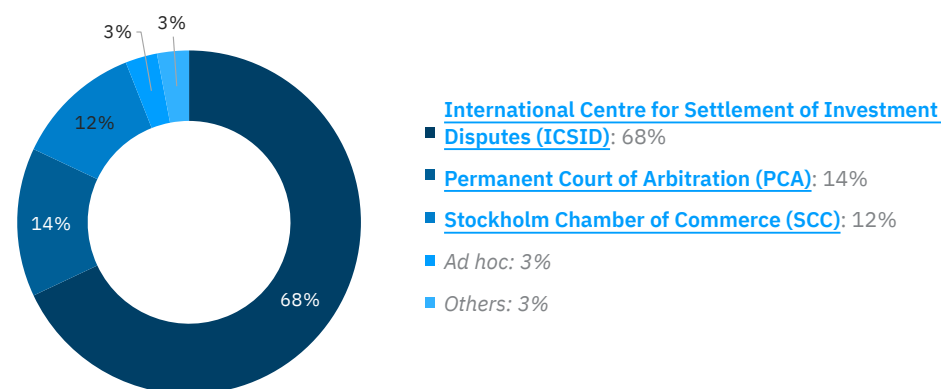
- The **Top 3** arbitral institutions –namely [ICSID](#), the [International Chamber of Commerce \(ICC\)](#), and the [Permanent Court of Arbitration \(PCA\)](#)– administered **64.5%** of all electricity & renewables arbitration cases available on Jus Mundi.
- **Ad hoc arbitration** is used in the sector but far from the levels seen in maritime arbitration, where ad hoc arbitration was used in 76% of cases available on Jus Mundi as of May 2022. It is used both in investment and commercial arbitrations in the sector, with respectively 3% and 11% of cases available on Jus Mundi using ad hoc arbitration in the last decade.

Parties choose *ad hoc* arbitration in electricity & renewables disputes about as much as they do in [oil & gas disputes](#) and [mining disputes](#). They have been favoring institutional arbitration more and more over the years.

In fact, **ad hoc arbitrations in investor-State disputes** in the field have steadily **decreased over the last decade**. In the last year, only one arbitration case available on Jus Mundi is not administered by an institution, i.e., [Primesouth International Offshore S.A.L. v. Republic of Iraq \(II\)](#).

Most selected arbitral institutions for investor-State arbitration cases in the Electricity & Renewables sector in the last decade

- according to our database as of August 2022 -



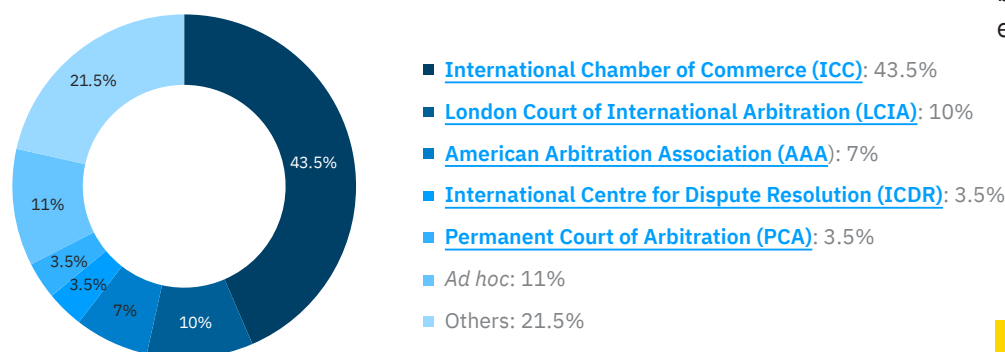
- While [ICSID](#) administers **68% of investor-State arbitrations** in the electricity & renewables sectors, the [PCA](#) and the [Stockholm Chamber of Commerce \(SCC\)](#) have seen a growing caseload. Interestingly enough, these are also the most trusted arbitral institutions in investor-State [oil & gas disputes](#) as well, demonstrating that these three institutions are favored by the energy sector as a whole for their disputes. Both the [SCC](#) and the [PCA](#) also administer an important number of commercial arbitration cases in the electricity & renewables sectors.

Although [ICSID](#) is a staple of the ISDS regime, the regime itself has come under increasing criticism in the last decade, so much so that it has been said to be facing a legitimacy crisis. This was supposedly the reason for [Bolivia](#) and [Venezuela](#) to denounce the [ICSID Convention](#) in 2007 and 2012 respectively, as well as [Ecuador](#) in 2009 (which ended up signing the ICSID Convention again in 2021). It also led to the demise of the intra-EU ISDS system in the wake of the CJEU landmark decision in [Slovak Republik v Achmea BV](#).

The amendment of the ICSID Rules and Regulations –which entered into force earlier this year on July 1, 2022– has therefore been a welcomed development in addressing the ISDS regime’s legitimacy crisis. Among other changes, the Rules now provide for greater transparency, which is essential, as noted by the tribunal in [Vivendi v. Argentina \(II\)](#): “public acceptance of the legitimacy of international arbitral processes, particularly when they involve states and matters of public interest, is strengthened by increased openness and increased knowledge as to how these processes function” (para. 22).

Most selected arbitral institutions for commercial arbitration cases in the Electricity & Renewables sector in the last decade

- according to our database as of August 2022 -



- [ICC](#) is the **top arbitral institution in commercial arbitration** of electricity & renewables disputes, with **107 cases** available on Jus Mundi, including **61 filed in the last 10 years**.

In 2021 ad up to August 2022 only, out of **45 electricity and/or renewables cases** filed and available on Jus Mundi, **23 are commercial**

arbitration cases, including **9 administered by ICC**.

- The **top 5 most selected arbitral institutions in commercial arbitration** of electricity & renewables disputes only showcase institutions based in **Europe and the [United States](#)**.

This reflects the investment trends in this field: investment is concentrated in regions where energy transitions are at a more advanced stage, *i.e.*, advanced economies and [China](#). According to the [2022 World Energy Investment Report](#), in these regions, capital spending going to renewables and electricity grids grew from the early 2010s to the early 2020s by an annual average of USD 50 billion (and USD 90 billion for China). Despite comprising almost two-thirds of the global population, emerging markets, and developing economies only grew their investment by USD 10 billion. Yet, most of these countries are facing rapid growth in electricity demand.



TOOLTIP

Discover all the data you need about each arbitral institution through our [Arbitral Institution Profiles](#).

Most Popular Arbitration Seats

The selection of the seat of arbitration is an important strategic choice, as it determinates the law that applies to the arbitral procedure. Selecting an improper seat can result in several procedural and practical difficulties.

Our survey indicated **52 distinct seats** in electricity & renewables arbitration, some of which are established and popular seats of arbitration and others which are growing in popularity as of late.

Top 3 most selected seats in Electricity & Renewables Arbitration

- according to our database as of August 2022 -



DISCLAIMER:

In investor-State arbitration, [ICSID](#) is the primary arbitral institution for electricity & renewables disputes. Although ICSID arbitrations technically do not have a legal seat, our database registers these cases as seated in Washington D.C. in order to differentiate them from cases with unavailable information regarding their seat.

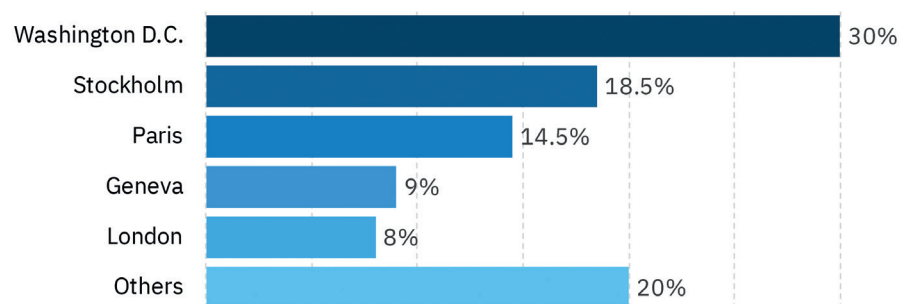
Key Takeaways

- **Stockholm** is the **most chosen seat of arbitration** in the electricity & renewables sector. Its prime position in the ranking can be explained by the fact that it is chosen both in investment and commercial arbitration.



Most selected seats in investor-State arbitration for Electricity & Renewables disputes

- according to our database as of August 2022 -



- In investor-State arbitration, **Stockholm** is mainly chosen for disputes arising from the [Energy Charter Treaty \(ECT\)](#). In fact, of all electricity & renewables cases arising out of the ECT and available on Jus Mundi, **40% are seated in Stockholm**.

The uncertain future of the ECT may influence how often Stockholm continues to be selected as a seat for investment arbitration in the energy sector overall.

- The popularity of Stockholm as an arbitration-friendly seat no longer needs demonstrating. In fact, the Swedish Arbitration Act recently underwent a reform to make Swedish arbitration even more attractive to foreign users and international disputes. The amendments came into effect in 2019.

[Sweden](#) is known as a jurisdiction that values transparency, neutrality (non-corruption), and adherence to the rule of law, making it a trustworthy choice for dispute resolution.

- The [Stockholm Chamber of Commerce \(SCC\)](#) contributes to making the Swedish city a prime seat of arbitration. In addition to its [Arbitration](#) & [Mediation](#) Rules, the SCC offers [Rules for Expedited Arbitration](#)

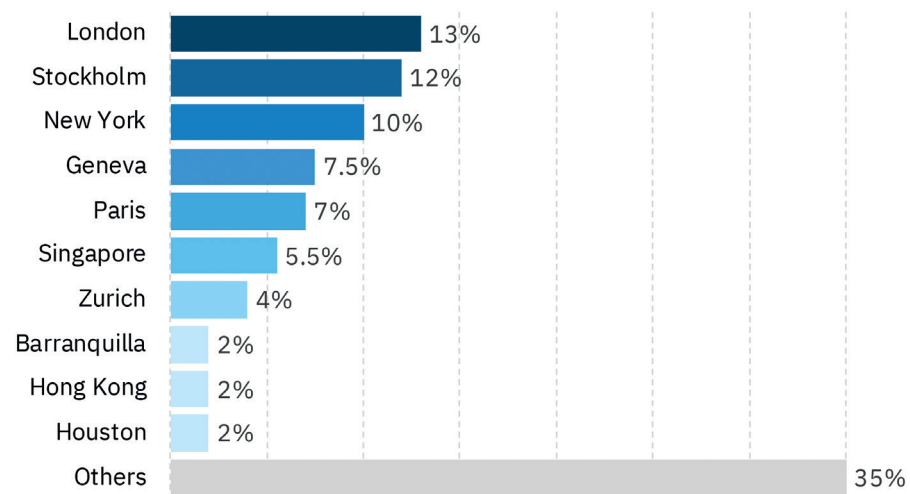
[tion](#) and, since 2021, [Rules for Express Dispute Assessment](#), a new simplified service. It is also usually considered less expensive than ICC arbitration and has been praised for its efficiency.

According to our data, in most instances, parties selecting the **SCC** to administer their arbitration have chosen **Stockholm as a seat of arbitration**.

- Stockholm is a close second to London** in seats most chosen in **commercial arbitration** of electricity & renewables disputes, according to our data.

Most selected seats in commercial arbitration for Electricity & Renewables disputes

- according to our database as of August 2022 -



- London** is the **most selected seat for commercial arbitrations** of electricity & renewables disputes. It is followed by **Stockholm** and **New York**.

The upcoming reform to the English Arbitration Act will certainly make London an even more attractive seat in the next few years.

- As previously mentioned, parties selecting the SCC as the administering arbitral institution of their electricity or renewables disputes tend to choose Stockholm as their seat of arbitration.

Unlike Stockholm, parties choosing to seat their arbitrations in London or New York have chosen a range of arbitral institutions to administer their electricity or renewables disputes.

- [Singapore](#) has also grown in popularity as a commercial seat of arbitration in the field in **the last five years**.

Singapore's changes to its arbitration law in the last few years have undoubtedly played a positive role in this increase. Although SIAC is the most preferred arbitral institution in Asia-Pacific Region ("APAC"), it does not seem to be particularly favored for electricity or renewables disputes in general (See, [2021 SIAC Report](#)). Parties seating their arbitrations in Singapore tend to choose European-based institutions such as the ICC and PCA.

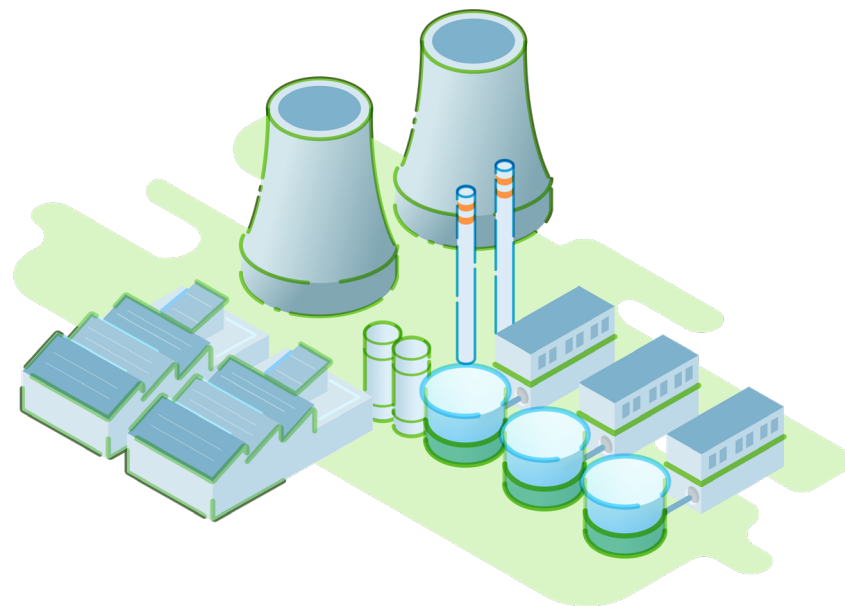
- Jus Mundi recently referenced cases seated in **Barranquilla, Colombia**, where the [Conciliation and Arbitration Centre of the Chamber of Commerce of Barranquilla \(CCB\)](#) has administered some electricity & renewables arbitration cases. This is a surprising entry to our ranking.
- According to our data, a few other **Latin American and Brazilian seats** have been selected in electricity or renewables arbitration (namely Cartagena, [Colombia](#); Quito, [Ecuador](#); Santiago, [Chile](#); Rio de Janeiro and São Paulo, [Brazil](#)).

It is to be expected that the number of cases in the region will grow in the near future.

Indeed, in the past decades, the energy sector in the LATAM region has received major investments, particularly in renewables, which will likely continue to grow.

Electricity & renewables projects are capital-intensive and long-term projects, *i.e.*, easily frustrated by the region's political instability and drastic regulatory changes. Therefore, the number of cases in the region will increase, both in investment and commercial arbitration.

In the latter, parties in the region tend to prefer a local seat of arbitration, which is not the case when at least one of the parties involved is foreign, even when the dispute or matter is set in the region. Therefore, the expected growth in arbitration cases in the region will not necessarily involve increased use of local seats.



Most Appointed Arbitrators

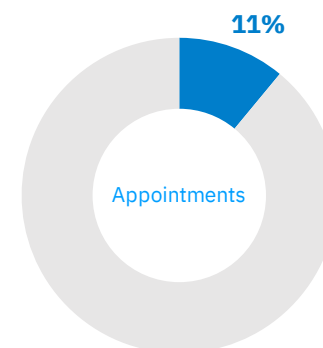
The selection of arbitrators is a crucial step in the arbitration process. Electricity & renewables arbitration is a technical field with capital-intensive and long-term projects, which requires arbitrators to have specific expertise in the field. However, finding the right arbitrator can be a cumbersome task, especially in such a specialized industry.

At the time of writing this Report, [Jus Connect](#) contains **over 8,600 arbitrator profiles**, of which 671 have appeared in electricity and/or renewables arbitration cases available on our platform. These **671 arbitrators** have been **appointed 1,391 times**.



TOOLTIP

Efficiently select your arbitrators with [Jus Connect](#), our free professional network tailored-made for the arbitration industry. What's more, verify in just a few clicks if they could possibly be conflicted with our [Conflict Checker](#).



Top 10 most appointed arbitrators represent 11% of all appointments of arbitrators in Electricity & Renewables Arbitration - according to our database as of August 2022 -

Top 5 most appointed arbitrators in Electricity & Renewables Arbitration (inc. ex aequo)

- according to our database as of August 2022 -

[Brigitte Stern](#)

[Albert Jan van den Berg](#)

[Francisco Orrego Vicuña](#)

[Stanimir A. Alexandrov](#)

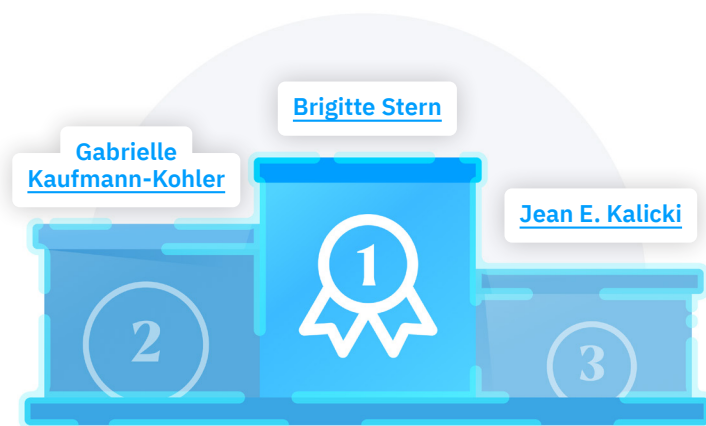
[Gabrielle Kaufmann-Kohler](#)

[John Beechey](#)

Key Takeaways

- Our **top 5 contenders (inc. *ex aequo*)** for the most selected arbitrator all have a heavy caseload in electricity & renewables arbitration. In fact, some of them are **mainly appointed in the field**. Save for one, they all have acted both in institutional and *ad hoc* arbitrations.
- [Brigitte Stern](#) is the **most active arbitrator in electricity & renewables arbitration**, according to our data. She was also in the top 5 most appointed arbitrators in our [Oil & Gas Arbitration Report](#) and [Mining Arbitration Report](#).
- Both [Stanimir A. Alexandrov](#) and [John Beechey](#) are also in the top 3 most appointed arbitrators in the field **in the last decade**. In fact, their appointments in the last decade represent over **80% of their overall appointments**. They are followed by [Gary B. Born](#), who received **100% of his appointments in electricity & renewables arbitrations in the last 10 years**, according to our database.

Top 3 most appointed female arbitrators in Electricity & Renewables Arbitration - according to our database as of August 2022 -



- It is important to note that two of the top 5 most selected arbitrators in electricity & renewables arbitration are female arbitrators, namely [Brigitte Stern](#) and [Gabrielle Kaufmann-Kohler](#). In fact, energy arbitration in general tends to count more women acting as counsel and arbitrators. Both [Brigitte Stern](#) and [Gabrielle Kaufmann-Kohler](#) also appeared in our top 10 most appointed arbitrators in our [Oil & Gas Arbitration Report](#) and [Mining Arbitration Report](#).
- For the most part, however, the lack of diversity in international arbitration is still a great concern. Tribunals should represent the broad spectrum of stakeholders impacted by their decisions. This also goes for counsel teams. A survey of the most appointed arbitrators in the field shows that a great majority of them are from Europe or the United States, followed by a small portion from Latin America, according to our data.



TOOLTIP

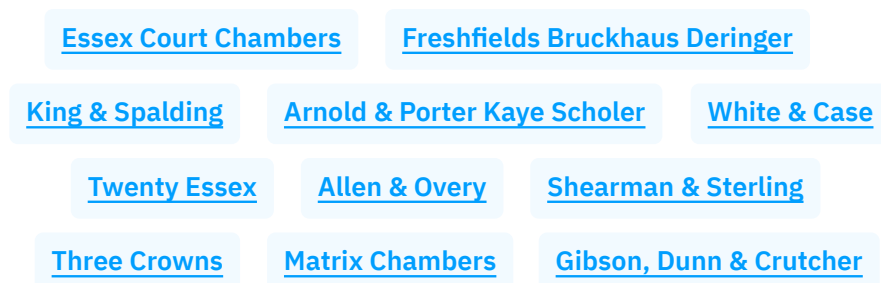
Showcase your entire case history, making it easier for people to hire or appoint you. Add cases to your [Jus Connect](#) profile now!



Most Active Arbitration Teams

As of August 2022, our data revealed **973 active arbitration teams in electricity & renewables arbitration**, including law firms, chambers, and expert firms.

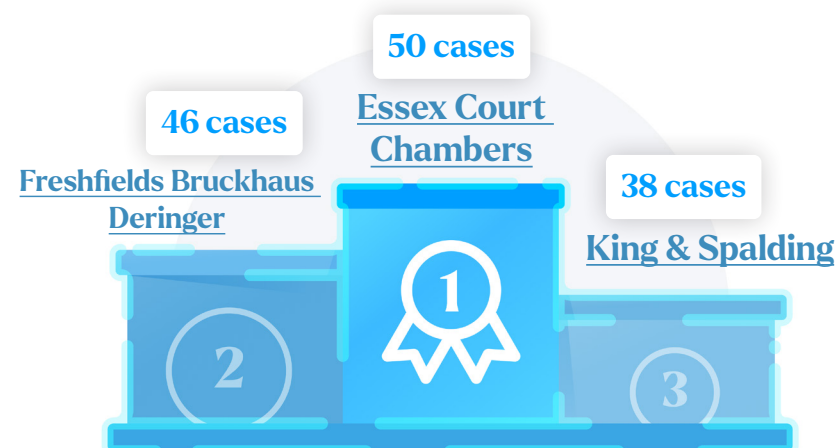
Top 10 most active arbitration teams in Electricity & Renewables Arbitration (inc. ex aequo) - according to our database as of August 2022 -



Key Takeaways

- Among the **top 10 most hired arbitration teams**, **3 are chambers**.
- [Essex Court Chambers](#) has had barristers particularly prolific in electricity & renewables arbitration, with **50 cases** available on Jus Mundi.

Top 3 most active arbitration practices in Electricity & Renewables Arbitration - according to our database as of August 2022 -



Just recently, [Stephen Houseman KC](#) was involved in local proceedings in the [HVF and HWG v. EGF](#) arbitration. The Judgment of the High Court of Justice of England and Wales ([2022] EWHC 2470) dated September 16, 2022 brings light to the dichotomy between the English Arbitration Act 1996 and the [UNCITRAL Rules](#), which governed the ad hoc London-seated arbitration. Even though the challenge of the partial award before the English Commercial Court was unsuccessful –proving the high threshold to challenges of awards made under section 68 of the English Arbitration Act–, the ruling also found that the arbitrators, in this case, had exceeded their powers in making an interim payment order in the

form of an award. Indeed, although arbitrators do have the power to grant provisional relief in the form of an award under the English Arbitration Act if the parties agree, article 34 of the UNCITRAL Rules governing the arbitration trumps the language of the Act and only allows for final awards. Therefore, the arbitral tribunal did not have the power to render an award for a mere interim remedy.

- Coming in at a close second, [Freshfields Bruckhaus Deringer](#) is the **law firm with the most active arbitration team in electricity & renewables arbitration**. In fact, according to the data available on Jus Mundi, the practice has dealt with more cases in the field than in any other economic sector.

Recently, the firm represented EDF in two ICC arbitrations over defective work by Areva's former nuclear reactor business, Framatome, in *EDF v. Areva and Framatome* (I) & (II). A final award was rendered in one of the two arbitrations last year, which has been reported as unfavorable to EDF. The parties eventually settled last year.

- Closing the podium is [King & Spalding](#) who was involved in **2 investor-State arbitrations in the electricity & renewables sector this year alone**, according to our data:
 - a case against [Spain](#), which was discontinued (See, [TS Villalba and others v. Spain](#)), and
 - another one against Romania which is ongoing (See, [Aderlyne v. Romania](#)).

According to our data, the firm was involved in at least **3 other renewables cases against Spain in the last five years**.

- Although not listed in our ranking, [Spain's legal counsel team](#) has also been very active in electricity & renewables arbitration, with **50 cases** available on Jus Mundi.

In the last five years alone, at least **13 electricity & renewables arbitrations were filed against Spain**, according to our data.

This context is majorly due to feed-in-tariffs and other similar schemes

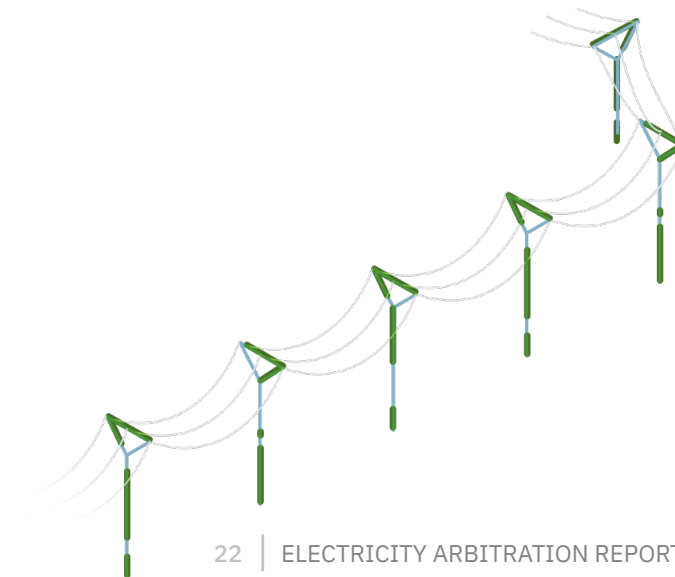
promoting long-term investment in the renewable energy sector enacted by Spain in the early and mid-2000s. [Spain](#) and other European countries had to scale back or rescind these schemes after the 2008 crisis and to comply with their obligations under EU law, which led to a series of arbitration cases. For Spain, it translated into what is commonly known as the "Spanish renewables saga".

- Our data revealed that the most active individual lawyers in electricity & renewables arbitration were from Spain's legal counsel team. In fact, the most active arbitration practitioner in the field is [Antolín Fernández Antuña](#) – with a total of **40 cases** in which he acted as counsel and one as arbitrator – who represented the Spanish government for many years before founding his [own practice](#).



TOOLTIP

Get a 360-degree overview of your external counsel's expertise using Jus Mundi's [firm profiles](#).



Most Active Expert Firms

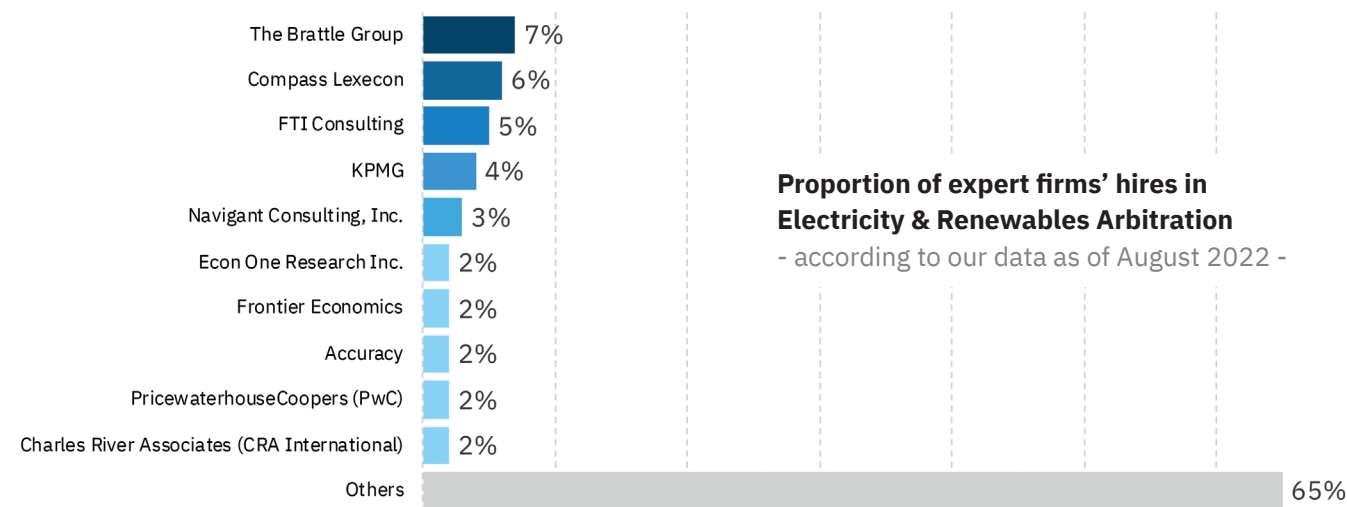
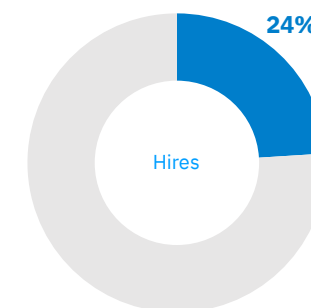
Parties and tribunals rely heavily on experts. As a result, expert firms are often solicited in electricity & renewables arbitration to address the complexity of the issues at stake and assess damages. Electricity & renewable energies projects create technical and complex disputes.

Expert evidence is therefore of paramount importance in providing clarification, knowledge, and technical assessment of complicated issues.

Our data shows that **208 expert firms** were solicited in electricity & renewables arbitrations.

Key Takeaways

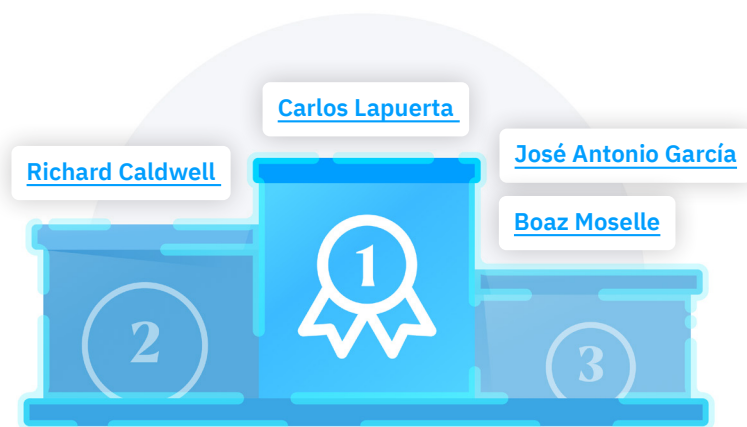
The **top 5 most appointed expert firms** represent **24% of all hires** in electricity & renewables arbitration, according to our data as of August 2022. It includes [The Brattle Group](#), [Compass Lexecon](#), [FTI Consulting](#), [KPMG](#), and [Navigant Consulting Inc.](#)



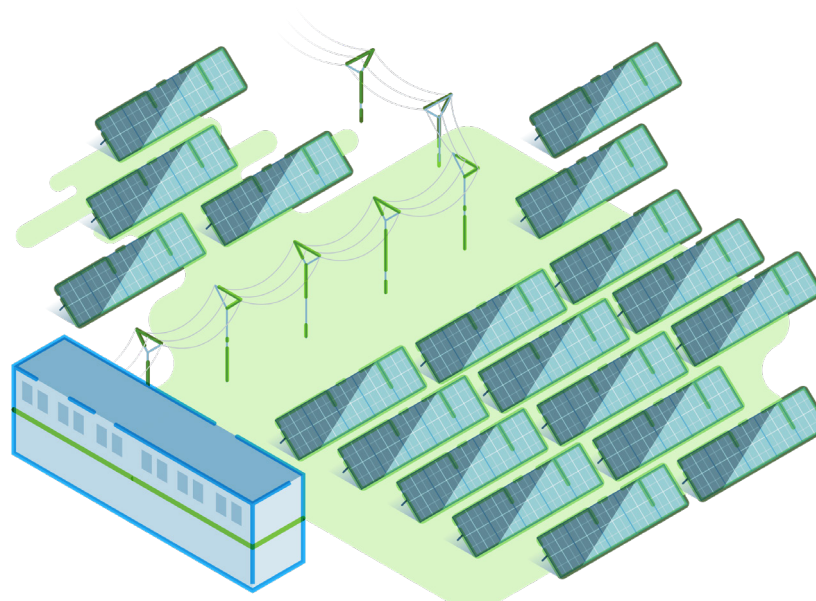
[Compass Lexecon](#), [KPMG](#), [Accuracy](#), and [BDO](#) are the hot expert firms of the decade in electricity & renewables arbitration.

Top 3 most active experts in Electricity & Renewables Arbitration

- according to our data as of August 2022 -



With **20 cases** available on Jus Mundi, [Carlos Lapuerta](#) is the **most appointed expert in electricity & renewables arbitration**, according to our database. He was mostly appointed in investor-State arbitrations and especially under the ECT.



Em-Powering Perspectives in Electricity & Renewables Arbitration

OFFSHORE WIND FARM; PARTICULAR RISKS

Wind farms produce a clean and renewable source of energy. Their development helps to reduce emissions, and the [United Kingdom \(UK\)](#) has been dedicated to the increased installation of wind farms since 2007, when the Government agreed to an overall European Union (EU) target. The Renewables Directive formalised the move towards renewable energy, initially with onshore and then offshore wind farms. Construction costs for offshore wind farms have fallen considerably since 2012 with the introduction of larger turbines, improved technology, and the efficiencies that come with experience.

Offshore wind farms are an entirely new way of producing energy, and much of the design, engineering, and technology has either been adapted or is new. The innovations in wind farms, the design obligations, and the



[Nicholas Gould](#)

Partner, [Fenwick Elliott LLP](#)
Visiting Professor, King's College London

meaning of a fitness for purpose obligation have recently been tested out in relation to the Robin Rigg offshore wind farm in the Solway Firth. E.ON contracted with MT Højgaard to design, construct and install 62 monopile foundations, with a transition piece that sat on top of the monopile providing the link to the turbine tower. The transition piece relies on a grouted connection to the monopile.

The design standard for the offshore wind farms was produced by a long-standing maritime organisation called Det Norske Veritas. DNV issued the first international standard (DNV-OS-J101) for the construction of wind farms in 2004. It included codes and standards for the grouted connection. MTH used the J101 standard to design the transition pieces.

After construction, it quickly became apparent that there was a problem as the grouted junction between the transition piece and the monopile was failing. MTH's position was that they had designed and installed the transition piece in accordance with the recognised J101 standard and were not liable. E.ON's position was that MTH had been negligent or they had failed in any event to provide a foundation that was fit for its intended purpose.

The contract was, as you might imagine, a substantially long and detailed document. It contained technical requirements which comprised around

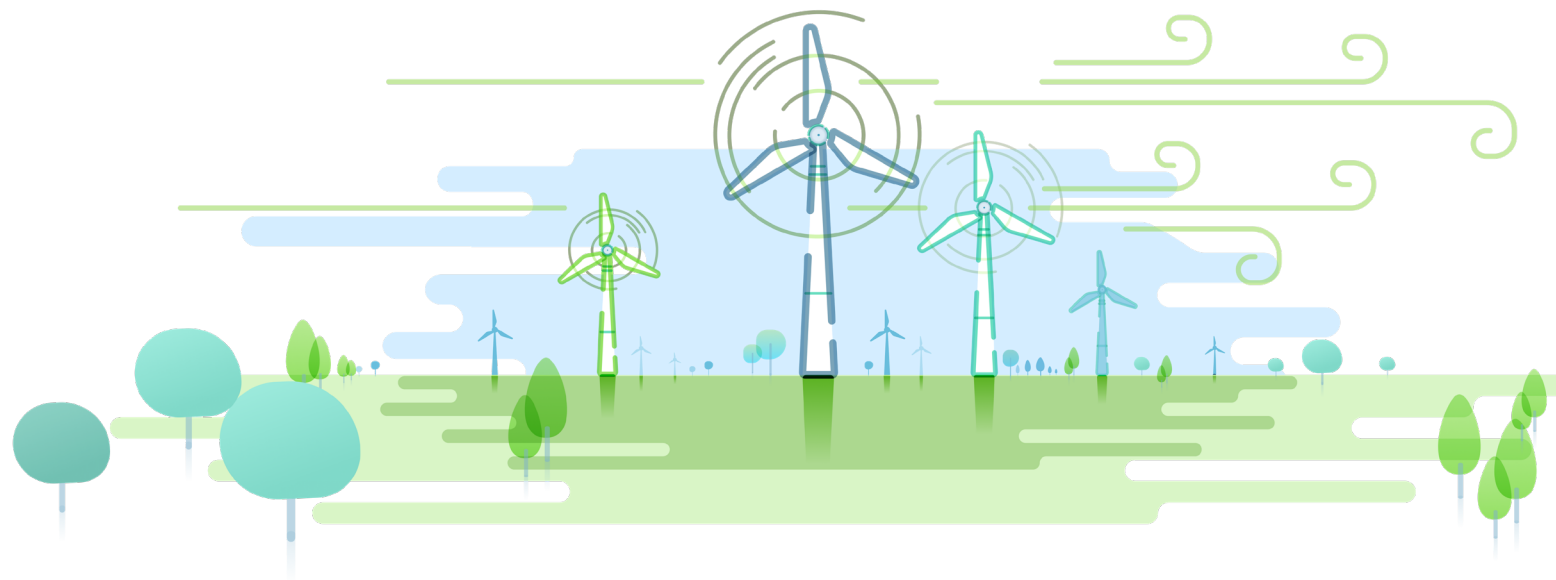
300 pages and included a section on the design basis. The works were to be designed for a minimum design life of 20 years without any major retrofits. It further stated that this was a minimum requirement to be considered in the design. One section of the technical requirements, at paragraph 3.2.2.2, stated that *“the design of the foundations shall ensure a lifetime of 20 years in every aspect without planned replacement”*. The language here was the departure from much of the balance of the contract. In other words, the contract discussed design life, but in this section the language had switched to a lifetime of 20 years.

E.ON argued that MTH has an absolute obligation to see that the foundations would be fit for their purpose, which was safely transmitting loads to the foundations for a 20-year lifetime. The parties could not agree and in April 2014, the UK High Court found that MTH had not been negligent in undertaking the design, but there was an absolute warranty that the foundations should have a 20-year lifetime (See, [2014] EWHC 1088 (TCC)). In April 2015, the Court of Appeal found that technical requirement 3.2.2.2 was *“too slender a thread upon which to hang a finding that MTH gave a warranty of 20 years life for the foundations”*. So MTH won and E.ON was

awarded £10 nominal damages (See, [2015] EWCA Civ 407).

E.ON appealed to the UK Supreme Court (See, *MT Højgaard A/S v. E.ON Climate and Renewables UK Robin Rigg* [2017] UKSC 59). Lord Neuberger provided the majority judgment and concluded that MTH was indeed liable to design and install foundations that would have a lifetime of 20 years. In other words, it was not the case that they should design something that might last 20 years, based upon known design knowledge and standards, but that the final construction when installed had to last 20 years.

This judgment has been a surprise for many design and build contractors, not just those operating in the offshore wind farm sector. Many contractors and much of the supply chain now seek to reject any fitness for purpose or lifetime obligations. This, of course, leads to extensive negotiations in relation to the contract documents. On the other hand, we have also seen design lives increased to 50 and even 70 years in some instances. Many would argue that this is way beyond normal design life requirements let alone an expectation of a lifetime without refurbishment



for just about any typical construction or engineering project.

And as a result, the design requirements and fitness for purpose obligations are a risk that is currently hotly debated in relation to wind farm projects.

Offshore wind farms also carry a number of other specific risks due to the nature of the works. A typical list of specific offshore wind farm risks includes:

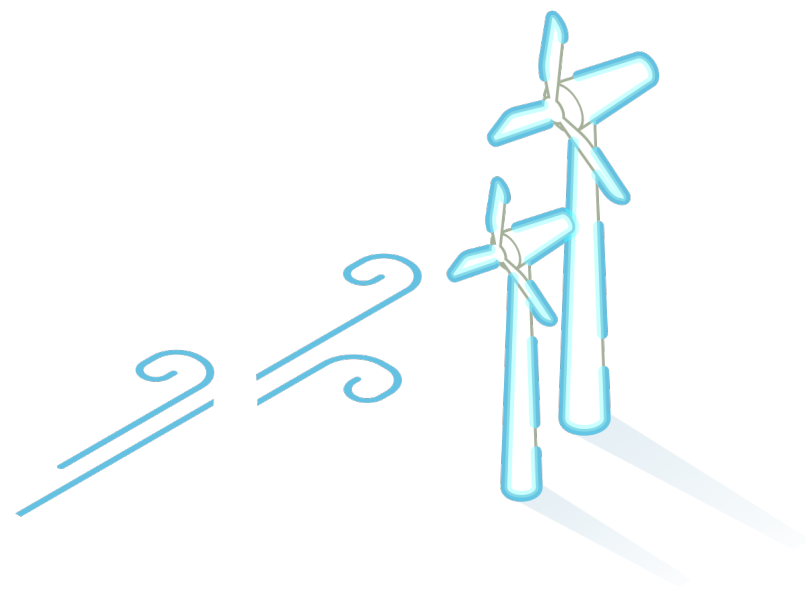
- **Interface risks:** Typically, there are many interdependent packages of work, contractors and suppliers. For example, foundations and the wind turbine generator, foundations and cables, supply, transportation and on/offshore equipment installation. Also, the installation vessels, crew transport vessels and supply ships. Co-operation between different contractors is required.
- **Environmental Impact Assessment:** Taking into account the environmental constraints and wildlife considerations.
- **Allocation of sea-bed risk:** Sub-sea cables, foundations, installation vessel (jack-up/fix legs to sea-bed).
- **Adverse weather conditions:** Wave heights, wind-speeds, storms.
- **Power curve test:** Tests on completion to see if the wind turbine generator is working at its rated capacity.
- **Marine warranty surveyor provisions:** An independent insurance expert is required to approve certain offshore transport operations. Also consider the scope of the insurance required.
- **Design liability:** The fitness for purpose obligation is onerous and is often diluted if the project delivery is split into multiple packages.
- **Health & Safety:** Additional considerations arise because the work is offshore.

These are some of the key risks to consider. The list can be extended but

taking on these challenges and delivering renewable clean energy is fundamental to our move towards a reduced emissions future.

ABOUT THE AUTHOR

[Nicholas Gould](#) is a construction and international arbitration lawyer at [Fenwick Elliott LLP](#). He is frequently selected to advise on high value complex construction, engineering and energy projects around the world. Nicholas is highlighted as one of the titans of the international construction market. IBA's International Who's Who of Business Lawyers Today, listed him as one of the "ten most highly regarded individuals internationally for construction law". He is also a Visiting Professor at King's College London and Vice President of the ICC Commission on Arbitration and ADR.



THE EMERGENCE OF NEW CONTRACTUAL MECHANISMS IN THE RENEWABLE ENERGIES SECTOR

In a recent ruling, the Versailles Court of Appeal (11 April 2022, n° 20VE3265) approved the French State's decision denying permission to install wind turbines near a village called Illiers-Combray. The Court stated that environmental protection also included protection of landscape and of cultural heritage, which in the case at hand was created by the artistic work of Marcel Proust, and prevailed over the implantation of a wind farm. This case, whilst demonstrating novel and sometimes unforeseeable risks of renewable projects, is not indicative of the growing economic, social, and legal importance of energy generated from renewables.

Renewable energy sources occupy an essential place in the national and European energy policies. Their implementation and promotion, however, require suitable legal tools and, most importantly, contractual techniques which may only be appropriately carved if they take into consideration peculiar features of renewable energies.

The present article focuses both on specific contractual clauses necessary to apprehend particular features of certain sources of renewable energies (1) and, more globally, on emerging contractual techniques used in the renewables sector (2).

Specific Contractual Clauses

In an evolving legal, political, and economical environment, contracts are proving to be essential tools for the development of renewable energies as they allow considering both specific features of renewable sources of energy (a) and policies regulating the sector (b).



[Kamalia Mehtiyeva](#)

Co-Founding Partner
Barbier Mehtiyeva Law

CONTRACTUAL CLAUSES INFLUENCED BY SPECIFIC FEATURES OF RENEWABLES

Renewable energies are characterized by the sustainability of the sources, as opposed to fossil sources. However, this common feature set aside, the renewables conceal a heterogeneous category of energy sources, such as wind, solar, geothermal, hydraulic, marine energy as well as hydrogen, each of which have their specific features that must be taken into consideration when drafting contractual clauses.

One of the such features is an **unstable** and, therefore, constantly changing nature of production costs, as shown by recent drop of costs of the onshore wind and solar photovoltaic sectors. Furthermore, one of the most salient features of some renewable energy sources, such as wind or solar radiation, is their **intermittent nature**. The latter poses a number of difficulties that may only be addressed via contractual clauses.

First, as renewables operate on a must-run basis, they become unviable if they are required to shed power. **Intermittence** also raises challenges in terms of **network stability and security of supply**, uncertain to meet demand at any time. Thus, for a long time, the development of renewable energies has largely relied on the mechanism of the **purchase obligation**, which has played, and still plays, a decisive role in the promotion of the

production of energy from renewables. The mechanism of the obligation to purchase forces distributors – such as EDF for instance – to buy the electricity generated from the renewables, should the producer ask them to do so. With this obligation emerges **fixed-price clauses** guaranteeing the purchase price for a period of fifteen to twenty years, depending on the sector.

Other clauses, such as **“rendez-vous” clauses** – which provide flexibility in the performance of the contract and facilitate **renegotiations, hardship, price review, and take-or-pay clauses** – although not common to agreements in the renewable energies sector, acquire importance here due to a specificity of the sector, which is the particularly long duration of the projects. Carbon sequestration provides a very good example on the matter. **Carbon capture and sequestration** – which refers to the separation of CO2 from emission sources or the atmosphere and injecting it into deep geologic formations for long-term storage – has been recognized as a key player in the international goal to reduce CO2 emissions. However, the carbon capture and sequestration serve the green purpose only if it is injected to stay underground for an extremely long period of time, *i.e.*, centuries, a duration that is not familiar to contract law. In addition to the choice of clauses to apprehend legal matters related to the longevity of contractual parties as well as management of contractual risks, this raises the issue of their foreseeability and the very legality of such clauses.

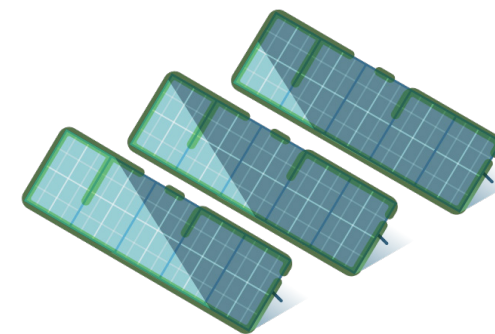
CONTRACTUAL CLAUSES INFLUENCED BY NATIONAL AND INTERNATIONAL POLICIES

There are two distinct trends in the renewables sector: **regulation**, which is common to most industries; and **support on behalf of States and public institutions** as part of the renewables promotion policy. Both trends are reflected in contractual clauses commonly found in the renewables sector.

New contractual clauses often emerge as a result of regulatory changes in

the energy sector at large. However, the frequency of regulatory changes in the renewable energy sector raises the question of the opportunity to insert clauses to adapt the performance of contracts to price shifts and technical trends affecting the market. As an example, such clauses would allow solar market players to reschedule their loan repayment plan when their production costs increase as a result of unforeseen regulatory changes. Even more specifically, contractors may agree to include a change of law clause to leave each other flexibility to adapt to new regulatory requirements adopted during the project's life.

As to the **promotion of sources of renewable energy**, the European Commission's 2014 [Guidelines on State aid for the environmental protection and energy 2014-2020](#) invited Member States to reorient their support mechanisms towards a gradual integration of renewable energy into the market. Consequently, States have implemented new support schemes in their national legislation. France, for example, has introduced an **additional remuneration regime**. It takes the form of a premium paid to renewable energy producers that complement the market price they are being paid. Although the very purpose of the premium is to limit market risks, the main difficulty raised by the additional remuneration contract is precisely the calculation and payment terms of this supplement, which makes the contractual arrangements necessarily more sophisticated than under purchase obligations. This challenge has led to the occurrence of **negative price clauses**. Indeed, due to the intermittency of certain renewable resources and the limited possibilities of storage, installations may operate at times when the demand is not equal to the production, and the supply is therefore greater than the demand. This can lead to a drop in prices on the electricity markets and result in negative prices, which is a financial risk to be considered when setting up projects.



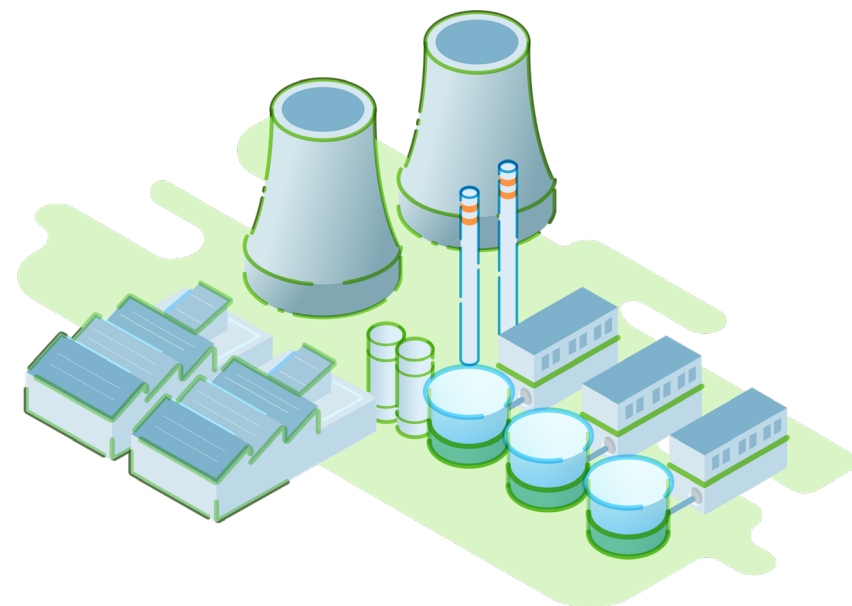
Specific Contractual Techniques

Projects in the energy sector, including power generation, often operate in accordance with **engineering, procurement and construction (“EPC”) contracts**, also known as turnkey projects. EPC contracts have certain advantages as only one contractor carries the burden of the management of the project and takes full responsibility for it. However, this contractual model has proven inadequate for most renewable projects, such as in the wind industry, which involve large volumes of proprietary equipment. Also, hydrogen obtained from the electrolysis of water can be liquefied and transported by cargo, as opposed to electricity generated by wind-farm and solar panels, which usually travels through cables. Hydrogen’s transportability makes this source of energy useful to industries such as shipping, aviation and heavy industry. However, this requires constructing of new and/or repurposing of existing gas storage and transport facilities in order to import and export hydrogen. Such development of the hydrogen sector relies on multi-party joint ventures and more complex contractual arrangements than the traditional contractual model of two-party relationships.

The change of contractual model in favor of joint-ventures is not unique to hydrogen but rather echoes a general trend of decentralization of renewables. As an example, the [Directive \(EU\) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources \(recast\)](#) emphasizes the benefits of the move towards decentralized energy production, such as the utilization of local energy sources, increased local security of energy supply, shorter transport distances, and reduced energy transmission losses. Such a goal is only conceivable through joint support schemes, joint projects, and cooperation agreements.

ABOUT THE AUTHOR

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GOVERNING LAW: A GAME CHANGER IN ENERGY PRICE-REVIEW DISPUTES

The energy sector has been struggling with an unprecedented crisis generated by a combination of many factors, including fallouts of the COVID-19 pandemic and consequential supply-chain disruptions, global responses and opposing measures based upon the Ukraine-Russia conflict, State interventions, and compliance pursuit of decarbonization policies. As the world faces record-level increases in energy prices, disputes and hardships observed in the performance of the energy trading contracts concluded prior to or during the rise of the crisis have been scaling up.

Facing such unavertable challenges, adopting extensive price review and adjustment clauses in contracts has emerged as a primary solution to protect each party from crushing outcomes in the event of a devastating change in circumstances, including any measures which may be imposed by governments, as well as price fluctuations in the market. Given that the parties stipulate a framework for a remedy –foreseeing a situation in which one of the parties has difficulty with the performance of their obligations under the contract–, a probable dispute may be prevented or become easier to arbitrate, in accordance with the parties’ prior intentions. However, in most cases, contractual remedies may be either inexistent or inefficient. Under these circumstances, the law governing the energy trading contracts comes into prominence and remedies offered thereunder tip the balance in price-review disputes.

While each legal system comes with its own pros and cons depending on the particularities of individual contracts, choosing between Civil Law and Common Law with their distinctive features is the first fork in the decision-making process. We examined how the remedies may differ in response to fundamental price changes.



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Civil Law Perspective: Hardship or Extreme Difficulty in Performance

Clausula rebus sic stantibus doctrine, which constitutes an exception to the *pacta sunt servanda* rule, principally provides that a party’s obligations under a contract may be deemed unperformable if a fundamental change occurs in the factors affecting such performance. The doctrine appears as hardship or extreme difficulty in performance in Civil Law systems.

The main common ground shared by Civil Law systems in terms of hardship is the possibility to adapt and/or renegotiate the contract as opposed to terminating it altogether. Accordingly, under most Civil Law systems, in the event that an extraordinary circumstance such as extreme price inflation occurs:

1. which was not or could not have been expected to be foreseen by the parties at the time of the conclusion of the contract;
2. as a result of a reason not caused by the debtor, and
3. the circumstances present at the time of the contract fundamentally changed against the debtor in a manner that required performance would be in contradiction with the good faith principle;

then the debtor may ask to adapt or renegotiate the contract or terminate it if adaptation is impossible.

This remedy is forthrightly codified in legislation under some legal systems such as Turkish law (*Article 138 of Turkish Code of Obligations*), German law (*Article 313 of the German Civil Code*), and French Law (*Article 1195 of the French Civil Code*). There are also certain legal systems, such as Swiss law, that apply the doctrine through the duty of good faith.

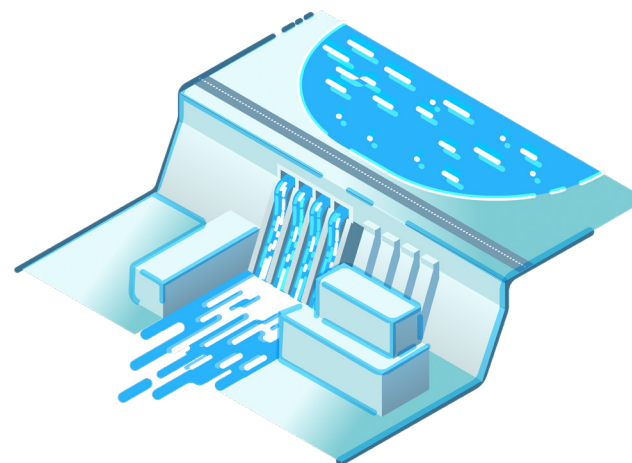
Through renegotiation or adaptation, the price agreed upon in energy trading contracts may be adjusted, or a price review mechanism may be implemented in a manner that would allow the continuation of the long-term performance for both parties in accordance with the good faith principle. This opportunity requires the assessment of the conditions surrounding each case on a case-by-case basis. Similarly to how the issue is handled in Civil Law systems, it is notable that adaptation is not easily implemented by arbitral tribunals or courts: parties are now expected to be more prepared for market fluctuations which have become the new normal. For example, the Turkish Court of Cassation has stated, in many decisions, that even if the hyperinflation is of great severity, such economic change in circumstances would not solely justify the adaptation of contracts since hyperinflation is not an unprecedented phenomenon for the Turkish economy. However, there are also decisions of the Court of Cassation stating that whether the conditions of hardship are met should always be assessed considering the facts of the particular case. The existence of prior economic crises does not mean drastic economic changes cannot constitute hardship.

Common Law Perspective: The Frustration Theory

The Frustration Theory is different from its counterparts in Civil Law, both in terms of its conditions and consequences. The theory provides that a contract shall terminate in the event that the performance of an obliga-

tion becomes difficult as a result of rendered circumstances.

In addition to difficulty in performance, imbalance in the corresponding obligations of the parties, and frustration of the purpose of the contract as a result of a substantial change in circumstances, the theory also subsumes impossibility of performance in consequence of physical, legal, or commercial reasons. In this regard, if the main benefit sought by the parties at the conclusion of the contract is frustrated or the performance is no longer viable; the contract is terminated *ex officio*, i.e., without the need for any party's request and even if the parties continue to perform their obligations. However, if the frustration only concerns a certain part of the contract, which may be separated from other parts, only rights and obligations arising from the said part of the contract may be assumed terminated.



Nevertheless, it is worth noting that the Frustration Theory has quite a narrow application. In its 1956 landmark decision, *Davis Contractors Ltd v Fareham Urban District Council* ([1956] UKHL 3), the UK House of Lords clarified that the mere existence of economic hardship did not suffice for application of the Frustration Theory. The decision states that the parties take certain commercial risks while entering into a contract, which may

result in greater or lesser profit than expected. In order for the Frustration Theory to be applied, such hardships should be caused by situations or events that should be impossible to contemplate at the time of the conclusion of the contract. The *Thames Valley Power Ltd v. TOTAL Gas & Power Ltd* ([2005] EWHC 2208) decision dated 2005 – which is about an energy dispute – provides another instance for the narrow implementation of the frustration. The court has made the application of the Frustration Theory clear by rendering that a party cannot be relieved from a contract due to *force majeure* or frustration only because it has become too expensive to perform.

In light of the above, Common Law systems seem less advantageous for the parties seeking a price review when compared to the Civil Law systems' adaptation/renegotiation opportunity. Accordingly, it would be advisable to add clauses to a contract governed by Common Law that clearly allocates risk and responsibility between the parties or stipulate an action plan, or a plan B in the event of unforeseeable changes in the circumstances. It would also be sensible to specify, in the contract, the core benefit expected from the agreement by the parties, if any, since it would make the resolution of a probable dispute regarding the frustration of the purpose of the contract much easier.

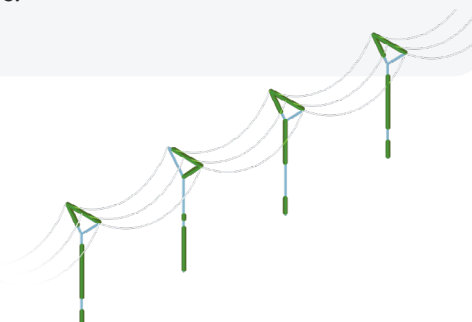
Conclusion

The unprecedented conditions that we currently live in require parties to energy trading contracts to be more cautious than ever. As a result, contracts are getting longer and more complex to cover any changing circumstances. However, when the contractual provisions fall short, the governing law emerges as a lifeline for the parties which struggle with price fluctuations. At that point, a governing law allowing adaptation or renegotiation may give a second chance to the parties to keep a deteriorated contract alive and eliminate direct termination along with associated claims. Accordingly, governing law is more than a perfunctory choice in energy trading contracts; if mindfully chosen, it is a real game-changer.

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SPOTLIGHTING A REGIONAL PERSPECTIVE

THE NEW BRAZILIAN CCEE ARBITRATION CONVENTION UNDER DISCUSSION AT ANEEL MAY BRING RELEVANT ADVANCES TO THE ELECTRICITY MARKET

The Brazilian electricity sector, especially the commercialization segment, has been, for years, the process of revision of the current Arbitration Convention (in force since 2007) that disciplines the resolution of conflicts between the agents of the Chamber of Electric Energy Commercialization (CCEE) and between them and the entity itself.

Recently, CCEE and the Brazilian National Electric Energy Agency (ANEEL) took essential steps in this long-awaited change and a new text was approved in October 2021 (“New Arbitration Convention”) by ANEEL’s technical department. The draft is currently pending final homologation by its Board of Directors.

From the statements issued during the reviewing process of the Arbitration Convention, the main reasons to amend the convention are:

1. to foster competitiveness among the arbitral institutions;
2. to protect the market from implications arising from bilateral discussions;
3. to define clear rules as to the scope of the Arbitration Convention; and
4. to adjust the Arbitration Convention to market evolution.

In this context, the New Arbitration Convention proposes significant innovations to the version currently in force, of which the following should be highlighted.



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The Plurality of Arbitration Institutions

Under the current Brazilian Arbitration Convention, the [Câmara FGV de Mediação e Arbitragem](#) (“FGV Chamber”) is the only institution allowed to administer arbitration proceedings initiated between the CCEE’s agents, as well as between them and the entity itself.

Some of the reasons that supported the definition of a single chamber were:

1. the formation of a center of excellence accustomed to the complexity of the sector;
2. the grouping of qualified and specialized arbitrators;
3. the knowledge acquired by the arbitrators who are members of the chamber;
4. the possibility of setting relevant precedents for the market and making the proceedings more agile and efficient; and
5. the offer of adequate jurisdictional protection for the agents.

However, in the revision process of the Arbitration Convention, the CCEE and ANEEL’s technical departments understood that the plurality of ar-

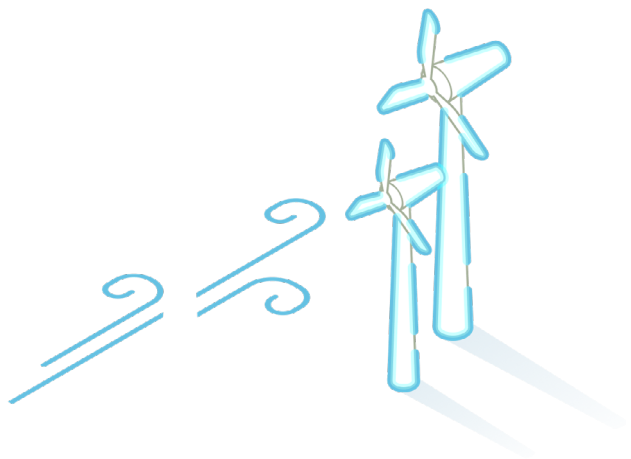
bitration institutions would ensure greater competitiveness, operational flexibility, and optimization of arbitration costs. Furthermore, it was identified that, by attributing to a single arbitration institution the administration of all arbitral proceedings, in principle, the possibility of choosing arbitrators was limited. This is because, according to the Rules of the FGV Chamber, the appointment of an arbitrator not included in its list depends on the approval of FGV's Arbitration Committee.

With the amendments proposed, the New Arbitration Convention ensures the possibility of the parties to choose among a list of arbitral institutions accredited by the CCEE according to the procedures and criteria established by it.

Requirement of Prior Mediation

According to ANEEL's technical departments, the mandatory recourse to mediation before arbitration will be one of the criteria for new arbitration institutions to be accredited by CCEE.

The wording of the New Arbitration Convention does not expressly include this criterion. However, the rule in question is provided for in the Electric Energy Commercialization Convention (article 45), and CCEE will follow it in the accreditation of the chambers.



Clarification of Arbitrable Conflicts vs. Subject to the Judiciary

The New Arbitration Convention simplified the identification of cases subject to arbitration. The cases are no longer listed in the text of the Arbitration Convention itself but in the Commercialization Convention.

According to these new rules, are considered **arbitrable** the conflicts that involve available rights between:

1. two or more CCEE agents or;
2. one or more CCEE agents and the CCEE.

In both cases, the matter must be outside ANEEL's jurisdiction or administrative recourses must have been exhausted. In addition, the New Arbitration Convention made it explicit that contractual conflicts between CCEE agents that may have repercussions on other agents' obligations are arbitrable.

On the other hand, the following cases are considered **non-arbitrable** and, thus, subject to the Judiciary:

1. contractual disputes that do not affect third parties and do not have repercussions on the CCEE's operations (i.e., that do not affect the market's multilateralism), and
2. claims in which the CCEE claims defaulted amounts, including penalties.

Submission of Guarantee in Case of Impact of the Arbitrated Dispute on Other Agents

The New Arbitration Convention establishes that, if it is identified that the arbitration could potentially impact third parties, the parties involved may

be required to provide financial guarantees in the amount of the possible exposure.

This new market protection mechanism aims to ensure that the economic effects of arbitration awards are limited to the parties involved, avoiding impacts on other market players.

In practical terms, in the hypothesis that the CCEE verifies whether the enforcement of the decision issued by the Arbitration Tribunal may impact other agents, the CCEE must inform the Arbitration Tribunal if that is the case and request from the parties the provision of a guarantee capable of covering the total value of the exposure.

Dissemination of Jurisprudence

The New Arbitration Convention introduces the obligation of disclosure of the jurisprudence by the arbitration institution within 15 days after the awards are made available to the parties. The content disclosed must contemplate the reasoning of the award, excluding the parties' personal and commercial data.

It should be emphasized that the disclosure of the awards extracts to the CCEE agents is already foreseen in the current Arbitration Convention. However, there is still no public repository of summaries to facilitate the studies and knowledge of the rationale adopted by the Arbitration Courts, so the obligation for such disclosure adds a higher degree of transparency to the decisions.

It is worth mentioning the positive impacts of this measure:

1. Publication of decisions will help educate agents,
2. Dissuasion for agents to bring unfounded claims, and
3. Motivation for the arbitrators to adapt their decisions to a predictable set of positions on similar factual and legal issues.

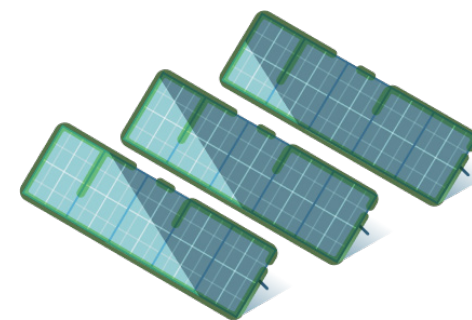
Challenge of Arbitrators

Under the New Arbitration Convention, the hypothesis previously classified as mandatory for disqualifying arbitrators will now be subject to the assessment of the parties (i.e., the circumstances, in the eyes of the parties, give rise to justifiable doubts as to the arbitrator's impartiality or independence) There are no longer any cases of barring possible arbitrators who were previously considered to be outrightly impeded.

Situations that might be considered as red flags in the appointment of arbitrators:

- (a) an employee, officer, director, or administrator of any party to the arbitration;
- (b) a spouse, relative, whether by blood or marriage, direct or collateral, to the third degree, of an officer or administrator of any party to the arbitration,
- (c) a creditor or debtor of a person who controls or holds an officer or director position in any party to the arbitration, and
- (d) a former employee, former permanent or temporary service provider or former consultant to any party to the arbitration within the last six months.

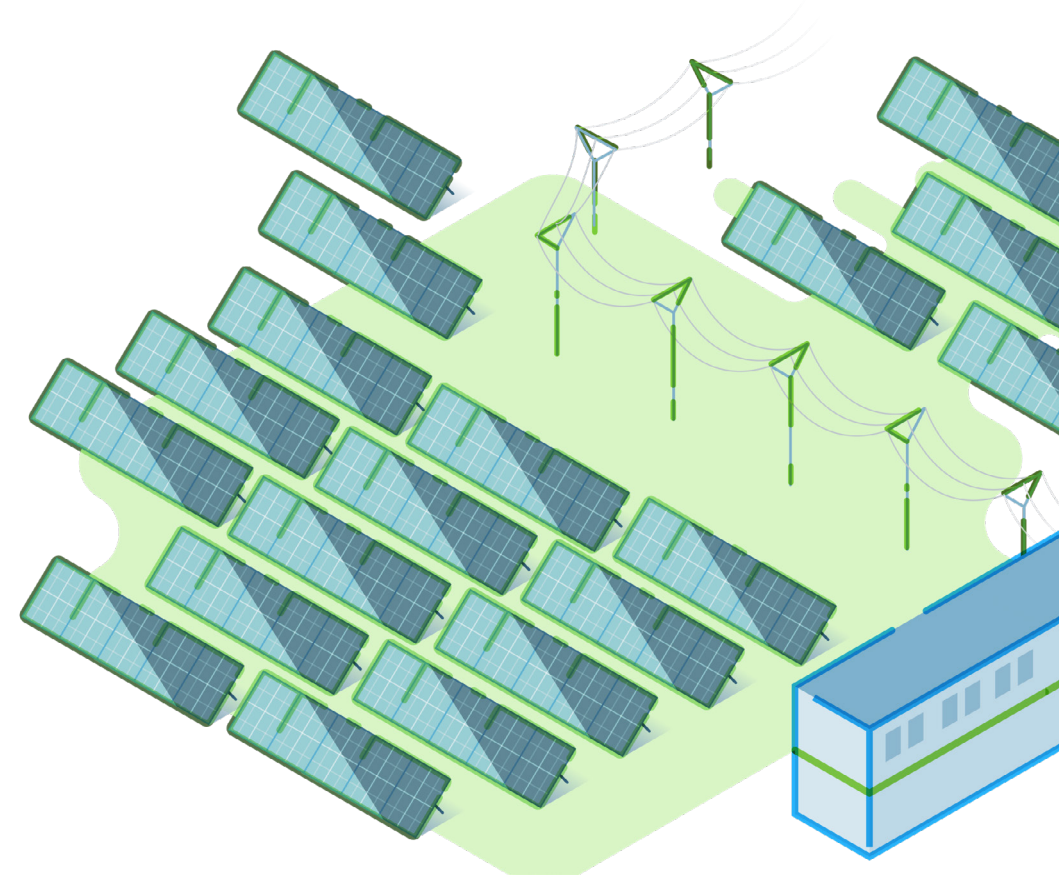
When ratified, the New Arbitration Convention will integrate the Commercialization Convention, applying to all CCEE agents and to CCEE itself, maintaining the acts and facts that occurred during the validity of the current Arbitration Convention, which includes ongoing processes.



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Rodrigo Rodi associate at **Edelstein Adogados**, has 5 years of experience in Regulatory Law at law firms active in the energy sector. He is a former student of the Sociedade Brasileira de Direito Público (Sbdp/FGV) and former academic exchange student of the Université Paris 1 Panthéon - Sorbonne. He is currently pursuing a master's degree in energy at the Institute of Energy and Environment of the University of São Paulo.



SHINING THE LIGHT ON THE EXPERTS' INSIGHT

TO BIAS ... OR NOT TO BIAS? AN ELECTRICAL ENGINEERING EXPERT WITNESS' PERSPECTIVE

Biasing in the electronics world is the determination of initial operating conditions, in terms of the current and voltage, of an active device in an amplifier, such as a diode, a transistor, or a vacuum tube. To put it simply, bias, in this case, is the current or voltage applied to said device in order to operate properly, for example, not causing distortion or noise, or having the same efficiency and performance throughout a broad input signal frequency range.

In the dispute resolution world, a bias or biased opinion is an opinion one holds despite all evidence against it. Usually, it is highlighted by the unreasonable or preconceived preference of one's opinion on a matter, which pairs with a particular tendency, trend, inclination, or feeling.

From a third-person perspective, the two definitions bare quite common similarities and functionality.

But, while in electronics, bias is necessary towards a perfect outcome or operational result, it is exactly the opposite in dispute resolution proceedings. To further elaborate on this, we need to highlight the usefulness of Expert Witness work, as in both Expert Reports and Hearing Testimonials, for the resolution of complex disputes, in particular with regard to Electrical Engineering and Construction arbitration cases.

Upon instruction on such technical cases, solicitors usually stumble upon difficulties in understanding the problem, the system, the physical laws governing the phenomena addressed, and in general, most –if not all– technical aspects engulfed. After all, their legal world lies far away from



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the Engineering universe.

Expert Witnesses or Technical Experts and their work equip solicitors' arsenal with the necessary weapons to define their strategy, which will then be deployed in their legal documents. It is therefore a solicitor's desire that the Expert will exhibit impartiality, accuracy, consistency, and reliability in their work. Only then will the solicitor be able to formulate a very solid claim, or counterclaim, to strongly support their case.

But is this what the client wants? Is it in line with the client's hopes for avoiding the counterparty's claims? Is it maybe revealing a design defect of a product, or even worse, the gross misconduct during a contract? Or is it actually strengthening the client's position, clearing things out and assisting both parties in reaching an amicable solution?

From an Electrical Engineering Expert Witness perspective, I have to admit that this heavily depends on whether the dispute seeks relief through full-scale litigation proceedings or other Alternative Dispute Resolution (ADR) methods.

Besides being very time-consuming and slow-moving, court proceedings are also quite expensive for all parties involved. Of course, the claims range might be overwhelming compared to the procedural costs. Also, a lot could be at stake for each party, for example, future contracts, reputa-

tion, delays, economic drawbacks, money flow bottlenecks, etc.

Therefore, the parties need to balance their expectations against their priorities when considering such proceedings.

On the other hand, arbitration, mediation, Expert determination, etc. are methods of settling disputes without either party needing to go to court. These ADR methods are usually defined in agreements entered into by business (contracts) which contain an arbitration/dispute resolution clause that states that any disputes arising of a contractual nature between the parties would be referred to a select arbitrator/mediator/Expert in a select location. Obviously, ADR methods are an excellent alternative to litigation mainly because they are “speedy”, more flexible, fair, and confidential.

From my recent experience in several cases, working closely with lawyers and arbitrators in providing solid, technically sound, impartial, and accurate Expert Reports is not always satisfactory to the client. It is common that we, as Experts, are asked to rephrase, reform, omit, or withdraw attention from facts that would somewhat alter the objectives of our Expert Report, because the client finds they are not in line with their case strategy. Would you call that biasing, or compromising impartiality? In other words, to bias .. or not to bias? That is the question.

The man in the middle then is the legal counsel or the barrister. They try to tune the Expert and the client to the same wavelength and in most cases, both sides finally agree on a common wording, phrasing or reference, for the benefit of better supporting the case. A prudent and reliable professional Expert, who will affix their signature to the Report, confirming impartiality, will then need to do a workaround as to how their opinion will be accurately and impartially expressed and still satisfy all stakeholders.

As an Electrical Engineering Expert Witness, I must add that each case should be dealt with independently and impartially, no matter how many similarities it may have with previous cases. Electrical Engineering cases

are maybe the most complex type of cases to opine on, since most Sciences and disciplines are involved such as, Electrical, Mechanical, Process, Chemical, Automation, Telecom, IT, etc.

As such, there can be numerous combinations of events that may be analyzed and used to support a case or an Engineering Expert opinion. This provides for alternatives in highlighting facts in an Expert Report. Thus, it is actually a tool for Electrical Engineering Experts to consider.

While in court proceedings, legal counsel are more demanding, as one would expect, asking for a number of changes in phrases, wording, and references to facts in the Expert Report; in arbitration and Expert determinations, they tend to be more flexible and allow more freedom to the Expert in formulating their Report.

In cases of court proceedings or full-scale arbitrations, where a Hearing Testimonial is underway, the Expert Witness will not only be called to strongly and solidly support their opinion, as expressed in their Expert Witness Report, but will also have to defend this opinion during the challenging cross-examination procedure with possibly an equally or better knowledgeable Expert.

In Expert determinations, the freedom that the Expert is allowed is a contributory factor to the absolute impartiality, reliability, and consistency of their Report.

In both cases, an unbiased opinion will always work best. In the first case, a biased opinion will be quickly disproven during the cross-examination. In the second case, a biased opinion will likely not assist the parties in reaching an amicable solution. Instead, it may lead to further ousting of the parties from each other's position, thereby leading them to a more costly and



time-consuming dispute resolution process, such as a full-scale arbitration.

Experts are there to clarify events and facts for the benefit of the parties, not make the case even more burdensome.

As a conclusion, Experts involved in dispute resolution of complex Electrical Engineering cases are strongly advised to remain unbiased throughout the proceedings, maintaining their level of professionalism, impartiality, reliability, and consistency. At the same time, they must also do their best to assist legal counsel or barristers in their next strategic steps without being forced to adopt an unreasoned or preconceived opinion of others.

This strict commitment to professional ethics strengthens the parties' trust in the Technical Expert Witness institution, and enhances the development of new technical dispute resolution methods, with the utmost objective of dispensing justice.

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Annex 1: 2021–2022 Electricity & Renewables Arbitration Cases Available on Jus Mundi

Case long title	Institution	Date	Type of case
Ascent Resources Plc. and Ascent Slovenia Ltd. v. Republic of Slovenia	ICSID	2022-08-15	Investor-State
RTI Rotalin Gas Trading AG and Rotalin Gaz Trading S.R.L. v. Republic of Moldova	ICSID	2022-08-03	Investor-State
NewOcean Energy Holdings, Ltd. v. Kuwait Petroleum Corporation	NULL	2022-06-06	Commercial Arbitration
Aderlyne Limited v. Romania	ICSID	2022-05-03	Investor-State
Prime Energía Quickstart SpA v. TSK Chile SpA, TSK Electrónica y Electricidad, S.A. and Rolls Royce Solutions America Inc.	ICC	2022-04-11	Commercial Arbitration
WOC Photovoltaik Portfolio GmbH & Co. KG and others v. Kingdom of Spain	ICSID	2022-04-05	Investor-State
Primesouth International Offshore S.A.L. v. Republic of Iraq (I)	ICSID	2022-03-04	Investor-State
Polskie Górnictwo Naftowe i Gazownictwo (PGNiG) v. OOO Gazprom Export	NULL	2022-03-01	Commercial Arbitration

[ICSID: International Centre for Settlement of Investment Disputes](#)

[ICC: International Chamber of Commerce](#)

Case long title	Institution	Date	Type of case
Compañía Española de Petróleos, S.A. v. Chimbusco Pan Nation Petro-Chemical Co., Ltd.	Ad hoc arbitration	2022-02-17	Commercial Arbitration
CMB Infrastructure Group IX, LP, CMB Infrastructure Group XI, LP and CMB Export, LLC v. Cobra Energy Investment Finance, Inc., Cobra Energy Investment, LLC, Cobra Industrial Services, Inc., Cobra Thermosolar Plants, Inc., Cobra Instalaciones y Sevicios S.	ICC	2022-02-04	Commercial Arbitration
Anthony Mining Company Inc. et al v. EAP Ohio LLC et al.	AAA	2022-01-31	Commercial Arbitration
PAO Gazprom and OOO Gazprom Export v. Polskie Górnictwo Naftowe i Gazownictwo (PGNiG)	Ad hoc arbitration	2022-01-14	Commercial Arbitration
Louis Claude Norland Suzor and SBEC Systems Limited v. Republic of Senegal	ICSID	2022-01-05	Investor-State
Acciona, S.A. and Imasa Ingeniera y Proyectos, S.A. v. Greenalia, S.A.	CAM	2022-01-01	Commercial Arbitration
Técnicas Reunidas, S.A. v. Neptune Energy Norway and Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures (SONATRACH) S.p.A.	NULL	2022-01-01	Commercial Arbitration
Primesouth International Offshore S.A.L. v. Republic of Iraq (II)	Ad hoc arbitration	2022-01-01	Investor-State
Ostchem Holding v. Ukraine	SCC	2022-01-01	Investor-State

ICC: International Chamber of Commerce / AAA: American Arbitration Association
ICSID: International Centre for Settlement of Investment Disputes

CAM: Madrid Chamber of Commerce / SCC: Stockholm Chamber of Commerce
LCIA: London Court of International Arbitration

Case long title	Institution	Date	Type of case
Korea Water Resources Corporation and Daewoo Engineering & Construction Co. Ltd. v. National Transmission and Dispatch Company of Pakistan	LCIA	2022-01-01	Commercial Arbitration
Enel, S.p.A. v. Republic of Turkey	ICSID	2021-12-10	Investor-State
Grupo Energía Bogotá S.A. E.S.P.and Transportadora de Energía de Centroamérica S.A. v. Republic of Guatemala (II)	ICSID	2021-12-09	Investor-State
Rosatom State Atomic Energy Corporation v. Fennovoima (II)	ICC	2021-12-01	Commercial Arbitration
Rosatom State Atomic Energy Corporation v. Fennovoima (I)	ICC	2021-12-01	Commercial Arbitration
ICC Case - ID No. 1918	ICC	2021-12-01	Commercial Arbitration
IVICOM Holding GmbH v. Republic of Albania	SCC	2021-12-01	Investor-State
Energía y Renovación Holding, S.A. v. Republic of Guatemala	ICSID	2021-11-15	Investor-State
KELAG-Kärntner Elektrizitäts-Aktiengesellschaft and others v. Romania	ICSID	2021-11-01	Investor-State

[ICSID: International Centre for Settlement of Investment Disputes](#) / [ICC: International Chamber of Commerce](#)
[SCC: Stockholm Chamber of Commerce](#)

Case long title	Institution	Date	Type of case
SREW N.V. v. Ukraine	ICSID	2021-10-28	Investor-State
Enel Colombia S.A. (formerly ESSA2 SpA) and Enel Green Power Costa Rica S.A. v. Republic of Costa Rica	ICSID	2021-10-13	Investor-State
TS Villalba GmbH and others v. Kingdom of Spain	ICSID	2021-09-16	Investor-State
Spanish Solar 1 Limited and Spanish Solar 2 Limited v. Kingdom of Spain	ICSID	2021-08-03	Investor-State
WhiteWater Midstream LLC v. Comisión Federal de Electricidad	LCIA	2021-07-02	Commercial Arbitration
Interconexión Eléctrica S.A. E.S.P. v. Republic of Chile	ICSID	2021-05-17	Investor-State
Corporacion Eléctrica del Ecuador v. Sinohydro Corporation	ICC	2021-05-17	Commercial Arbitration
J. Aron & Company LLC v. Comisión Federal de Electricidad (CFE)	LCIA	2021-05-17	Commercial Arbitration
Mainstream Renewable Power Ltd and others v. Federal Republic of Germany	ICSID	2021-05-13	Investor-State

[ICSID: International Centre for Settlement of Investment Disputes](#) / [LCIA: London Court of International Arbitration](#)
[ICC: International Chamber of Commerce](#) / [SCC: Stockholm Chamber of Commerce](#)

Case long title	Institution	Date	Type of case
Sunrise Power and Transmission Company v. Federal Republic of Nigeria	ICC	2021-05-11	Commercial Arbitration
Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v. Kingdom of the Netherlands	ICSID	2021-04-30	Investor-State
IPR Wastani Petroleum Ltd. v. Dana Gas PJSC	LCIA	2021-04-28	Commercial Arbitration
Modus Energy International B.V. v. Ukraine	SCC	2021-04-01	Investor-State
Iberdrola Mexico v. Comisión Federal de Electricidad (CFE)	NULL	2021-03-01	Commercial Arbitration
RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands	ICSID	2021-02-02	Investor-State
Fieldfare Argentina S.R.L. v. Compañía Administradora del Mercado Mayorista Eléctrico Sociedad S.A.	PCA	2021-01-01	Commercial Arbitration
ICC Case - ID No. 1660	ICC	2021-01-01	Commercial Arbitration
J. Aron & Company, LLC v. Federal Electricity Commission of Mexico	NULL	2021-01-01	Commercial Arbitration
ICC Case - ID No. 1658	ICC	2021-01-01	Commercial Arbitration

[PCA: Permanent Court of Arbitration](#) / [ICC: International Chamber of Commerce](#)



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