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# Oil and Gas Arbitration in the Asia-Pacific Region

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The Asia-Pacific region<sup>1</sup> has seen a surge in the use of arbitration in recent years. Although it is difficult to draw general conclusions about a large and incredibly diverse geographical region that stretches from French Polynesia to India to Mongolia, the increased use of arbitration by Asia-Pacific parties has been a consistent trend over the past decade, and shows no sign of declining. For example, the Singapore International Arbitration Centre (SIAC) recently announced that it administered an all-time record number of 343 new cases in 2016, up 27 per cent from 271 new cases in 2015 and nearly quadruple the number of new cases in 2006.<sup>2</sup> The Chinese International Economic and Trade Arbitration Commission (CIETAC) administered its all-time high of 1,968 new domestic and foreign-related cases in 2015, up from only 981 cases in 2006.<sup>3</sup>

Given the importance of the oil and gas sector to the Asia-Pacific economies,<sup>4</sup> it is perhaps unsurprising that oil and gas arbitrations have increased in both prominence and frequency. Disputes arising out of the oil and gas sector, which is often characterised by large, complex and capital-intensive ventures involving participants from multiple jurisdictions, are particularly suitable for international arbitration. Indeed, in a survey by the International Centre for Energy Arbitration,<sup>5</sup> respondents selected arbitration as the first choice method for dispute resolution in the energy sector, with expertise of decision-making and neutrality as the most important factors for this choice.<sup>6</sup>

According to a 2016 forecast by BP, the Asia-Pacific region's share of global energy consumption is expected to rise to 47 per cent in 2035 (more than North America, Europe and Eurasia), and its share of global energy production is expected to rise to 35 per cent by 2035, with net imports into the region increasing by 80 per cent from 2016 to 2035.<sup>7</sup> These dramatic increases in commercial and economic activity in the oil and gas sector portend an even greater role for international arbitration in the Asia-Pacific region.

The types of interests that may give rise to arbitration in the oil and gas sector are diverse, and vary within the region. Japan, South Korea and China are the three largest importers of liquefied natural gas (LNG) in the world – with their combined LNG imports accounting for more than half of global LNG imports in 2015.<sup>8</sup> Australia, Malaysia, India and Indonesia, along with China, are the largest oil and gas producers in the Asia-Pacific region.<sup>9</sup> Jurisdictions such as Timor-Leste, Vietnam and the Philippines have significant amounts of unexplored oil and gas resources that are more recently being commercialised.

Although it is difficult to generalise about the varied contracts, practices and legal frameworks pertaining to oil and gas across the Asia-Pacific region, a few emerging trends can be identified. This article examines and elaborates on these trends, and then considers possible future directions for oil and gas arbitrations in the region.

## **Current trends**

Efforts to make arbitration more attractive

Several jurisdictions in the Asia-Pacific region have taken steps to make themselves more attractive to arbitration generally and oil and gas arbitration in particular. These have taken the form of institutional developments and legislative changes.

### *Institutional developments*

Australia has introduced innovations specific to the oil and gas sector. In November 2014, the Perth Centre for Energy and Resources Arbitration (PCERA) was launched. As a specialist energy and resources arbitral institution, PCERA is the first of its kind not only in Australia,<sup>10</sup> but also in the Asia-Pacific region. It is intended to serve as a regional hub for the resolution of disputes arising out of energy and resources projects in Australia, and the wider Asia-Pacific region. The PCERA Arbitration Rules are, like many other established rules, based on the UNCITRAL Arbitration Rules, with slight modifications.<sup>11</sup> PCERA's distinguishing feature is its specialist panel of arbitrators with expertise in the energy and resource sectors, and who are based in the Asia-Pacific region. These arbitrators will be able to bring their industry experience and regional knowledge to bear in the resolution of regional energy or resource disputes.

Other institutions in the region have made changes that are designed to improve arbitration generally, but that will also have a positive effect on oil and gas arbitration. For example, SIAC revised its Rules in 2016. A number of amendments will enhance the utility and attractiveness of the SIAC Rules to the oil and gas sector, including a new procedure for the early dismissal of claims and defences; new provisions regarding joinder of additional parties and consolidation of multiple arbitrations; and further refinements to the existing emergency arbitrator and expedited arbitration procedures.<sup>12</sup> Given that oil and gas disputes often involve multiple contracts and multiple parties, there are real efficiency gains from joining relevant parties or consolidating such disputes in a single arbitral forum, if it is fair and appropriate to do so. Disputing parties will also benefit from the streamlined procedures that allow them to very quickly obtain expedited interim relief before the constitution of the tribunal, with an emergency arbitrator appointed within one day (including weekends), and a decision issued within 14 days;<sup>13</sup> or the procedures that will allow an award to be obtained within six months of the constitution of the tribunal.<sup>14</sup>

There is a degree of convergence among the rules of the leading arbitration centres in the Asia-Pacific region. The Hong Kong International Arbitration Centre (HKIAC) revised its Rules in 2013, and the latest version of the Rules also include comprehensive provisions dealing with multiple contracts, joinder and consolidation, emergency interim relief and expedited procedures.<sup>15</sup> CIETAC also revised its Rules in 2015, and the revised Rules also have provisions on multiple contracts, joinder and consolidation, emergency interim relief, and expedited procedures.<sup>16</sup>

In April 2016, India set up the Mumbai Centre for International Arbitration (MCIA), its first home-grown international arbitration centre.<sup>17</sup> The MCIA Rules, like the other leading rules in the region, have provisions dealing with multiple contracts, joinder and consolidation, emergency interim relief, and expedited procedures.

#### *Legislative changes*

Both Hong Kong and Singapore made substantive amendments, in 2013 and 2012 respectively, to their arbitration legislation. One common feature of both sets of amendments is that they include new provisions allowing for the enforcement of emergency interim relief ordered or awarded by an emergency arbitrator.<sup>18</sup> This is significant because it allows parties to oil and gas disputes to obtain, within a very short period of time, an enforceable order from the Singapore or Hong Kong courts that can preserve the status quo, or evidence, pending the final resolution of the dispute in arbitration. This can be critically important for participants in the oil and gas industry, where there are often back-to-back supply contracts and a need for urgency in dealing with interruption or diversion of supplies.

Singapore and Hong Kong have periodically made refinements to their legal frameworks for arbitration to ensure that they remain ahead of developments in the field. Most recently, in 2017, both Singapore and Hong Kong took legislative steps to permit third-party funding. Singapore introduced amendments to the Civil Law Act with effect from 1 March 2017 that abolished the common law torts of champerty and maintenance, and also provided that third-party funding is not contrary to public policy or illegal when it is provided by qualifying funders in prescribed dispute resolution proceedings. Further details on qualification of funders and prescribed proceedings are set out in the Civil Law (Third-Party Funding) Regulations 2017 (Regulations).<sup>19</sup> Equivalent legislative provisions have been introduced for debate in the Legislative Council of the Hong Kong Special Administrative Region in January 2017,<sup>20</sup> but no deadline for implementation is in place yet. These changes will provide additional options to users in the oil and gas sector in terms of funding their claims (although users should be aware that public policy issues may still arise if third-party funding is prohibited in a jurisdiction where enforcement may be sought).

In 2015, Australia also made changes to its arbitration legislation that will have positive consequences for energy arbitrations. Notably, the amended international Arbitration Act now provides that arbitrations seated in Australia are presumptively confidential, subject to a number of limited exceptions, namely consent, third-party rights, enforcement of awards, public interest and natural justice.<sup>21</sup> Confidentiality can be very important for the oil and gas industry, especially as highly valuable and proprietary information may be at stake, particularly in upstream exploration and appraisal ventures.

India has made significant strides to improve its reputation as a venue for arbitration, including recent revisions to its legal framework for arbitration through the recent 2015 Indian Arbitration and Conciliation (Amendment) Act.<sup>22</sup> The new Act brought about a number of far-reaching changes to the arbitration legal system in India, including strict time limits for an arbitral tribunal seated in India to render a final award, and limitations on the scope of public policy as a ground for refusing enforcement of awards. Although some of these changes (such as the time limits) have been criticised, many of them are in line with modern arbitration practice and, along with the introduction of the MCIA, will give India greater prominence as a potential seat for arbitration.

#### *Arbitrations involving states or state-linked parties*

Oil and gas resources often take on a strategic, security-related or geopolitical significance for a state. The state is the resource-owner under law for most countries in the region.<sup>23</sup> Producing states are thus key players in the oil and gas industry, and may take on a commercial interest in a particular oil and gas venture or contract, or exercise certain regulatory and control functions that affect a particular venture or contract. States can participate in a venture or contract in one or more of a variety of ways: they may participate through an oil and gas ministry or some type of government agency; they may participate through a national oil and gas company; or they may regulate through hydrocarbon laws, regulations or policies.<sup>24</sup>

Oil and gas arbitrations therefore frequently involve states or state-linked parties. These can include commercial arbitrations arising out of various contracts between private parties and states or state-linked parties, and also arbitrations under investment treaties.

#### *Commercial arbitrations*

States or their national oil companies are typically parties to upstream agreements granting private oil and gas companies the rights to certain oil and gas interests. These may take the form of a concession agreement, a licence agreement, a production sharing agreement (PSA) or a service agreement. They may also take the form of a hybrid agreement that combines elements of the different types of granting agreements. In general, since the 1970s, the oil and gas industry has shifted from concession agreements, under which the state granted title over the resource to private companies, to PSAs or service agreements, under which the state retains ownership over the resources but grants a private company the right to participate as an investor or a producer (or both).<sup>25</sup>

Under a PSA, which is the most commonly encountered type of granting agreement, including in the Asia-Pacific region, the investor takes on exploration and other risks in the venture, but has an entitlement to recover costs and shares in the production as profit, once operations become commercial. Indonesia introduced PSAs in the 1960s.<sup>26</sup> PSAs are now found across the Asia-Pacific region, including in Bangladesh, China, India, Malaysia, Myanmar, the Philippines, Sri Lanka and Vietnam.<sup>27</sup>

Disputes that may arise under PSAs include disputes regarding: the recovery of costs and accounting procedures under the agreement; the extent and nature of rights granted under the contract; non-payment of invoices or royalties; prices or price adjustments; and delays, disruptions or force majeure. The nature and complexity of such disputes vary, and depend on factors such as the scale and complexity of the project, the parties involved, and the political environment.

A large proportion of oil and gas arbitrations in the region have arisen out of production sharing and other granting agreements – India has reportedly been involved in arbitrations relating to 22 out of its 310 PSAs in the past 15 years.<sup>28</sup> Some recent arbitrations are illustrative of the range of issues that might be encountered. In November 2011, Reliance Industries filed a notice of arbitration against India regarding a dispute arising out of the cost recovery provisions of its PSA over the Krishna Godavari Dhirubhai 6 (KG-D6) offshore gas block in the Bay of Bengal, which it operates in a joint venture with the Indian government, BP and Niko Resources, a Canadian company.<sup>29</sup> Reliance Industries then filed another claim together with BP and Niko Resources in 2014 under the same agreement relating to the Indian government's delay in implementing a price hike for natural gas.<sup>30</sup> Most recently,

in November 2016, Reliance Industries began another arbitration under the same agreement after India imposed a US\$1.55 billion fine on Reliance Industries and its partners for extracting certain gas that had migrated to the KG-D6 block from adjacent blocks owned by the Oil and Natural Gas Company.<sup>31</sup>

#### *Investment treaty arbitrations*

A significant number of oil and gas disputes in the Asia-Pacific region have also been submitted to arbitration under various investment treaties. Such treaties frequently provide for commitments by host states to certain standards of conduct with respect to the treatment of foreign investments, and for the states' consent that breaches of such standards may be submitted to arbitration. Countries in Asia are party to more than 1,200 bilateral investment treaties (BITs) or investment agreements, many of which provide for the arbitration of investment disputes.<sup>32</sup>

A number of multilateral treaties that cover the region, including the 2009 Association of Southeast Asian Nations Comprehensive Investment Agreement and the Trans-Pacific Partnership (TPP), also provide for arbitration. The status and effect of the TPP is unclear in light of the current US administration's withdrawal by executive order in January 2017; however, talks are reportedly underway between the other TPP signatories, China, and South Korea to revive the deal in a different form.<sup>33</sup> Based on recent public statements by its foreign minister, China appears open to exploring the TPP, alongside other multilateral treaties that it is seeking to negotiate with trade partners in the Asia-Pacific, including the Regional Comprehensive Economic Partnership and the Free Trade Area of the Asia-Pacific.<sup>34</sup>

A substantial number of investment treaty arbitrations involving states in the Asia-Pacific region have related to oil and gas disputes. A large proportion of International Centre for Settlement of Investment Disputes (ICSID) arbitrations involving parties from the region have been related to the oil and gas sector. As of October 2016, out of the 46 ICSID cases involving a state from South and East Asia and the Asia-Pacific, 45 per cent concerned the oil, gas and mining sector.<sup>35</sup> A significant number of non-ICSID investment treaty arbitrations also relate to the oil and gas sector.

Given the complexity and variety of the security and political environments in which many oil and gas ventures operate, a wide range of different issues can give rise to investment treaty arbitration. For example, expropriation claims of various descriptions – whether framed as lawful or unlawful, direct or indirect – are not uncommon in the oil and gas sector. Recently, an UNCITRAL tribunal dismissed two treaty claims brought by Progas Holdings, a Mauritian entity, and its British-Iraqi shareholder against Pakistan for alleged expropriation of an LPG terminal in Port Qasim, Karachi.<sup>36</sup>

Retroactive taxation claims and other regulatory actions by governments also frequently give rise to investment treaty disputes. In March 2015, Cairn Energy, a Scottish oil company, initiated UNCITRAL arbitration against India under the UK-India BIT, alleging that India's demands for US\$1.6 billion in retroactive taxes against its Indian subsidiary, as well as India's restrictions preventing Cairn from selling its remaining 10 per cent stake in its subsidiary, are in breach of the treaty.<sup>37</sup> In May 2015, Hanocol Holding and IPIC International, Dutch subsidiaries of the International Petroleum Investment Company, initiated an ICSID arbitration against South Korea for retroactive tax levied on the sale of a controlling stake in Hyundai Oilbank, which is a Korean petroleum and refining company.<sup>38</sup> More recently, in July 2016, Royal Dutch Shell initiated ICSID arbitration against the Philippines for US\$1.1 billion in retroactive tax bills levied by the

Philippines auditing commission on the gas produced from the Philippines's first natural gas field in Malampaya.<sup>39</sup>

Investment treaty arbitration has also been subject to criticism in recent years, and the response of some states in the region has been to terminate or seek to renegotiate its bilateral investment treaties. Recently, in July 2016, India notified 57 countries of its intention to terminate its bilateral investment treaties, and has announced that it intends to replace those treaties by negotiating a new set of treaties based on the new Indian Model BIT, which it published in 2015.<sup>40</sup>

Indonesia also announced at the end of 2014 that it would formally phase out its 67 BITs, and has proceeded to terminate a number of such treaties in accordance with that announcement.<sup>41</sup> There have been indications that Indonesia plans to negotiate new treaties on different terms, although reports are not conclusive. For treaties that have been terminated or are about to be terminated, investments made prior to the expiry of the treaties should continue to enjoy protection under 'survival' or 'sunset' clauses for up to 15 years.<sup>42</sup> Indeed, in August 2016, Oleovest, a Singapore-based subsidiary of an Australian renewable energy company, initiated ICSID arbitration against Indonesia under the Singapore-Indonesia BIT with respect to a palm oil oleochemical project in Sumatra. Although the treaty had lapsed in June 2016, it contains a survival clause protecting existing investments for 10 years after June 2016.<sup>43</sup>

#### **Future directions**

##### *Price movements and volatility*

Price movements in oil and gas markets are a key driver of change in the industry. They are also a driver of disputes. Parties to energy-related contracts that were formed and negotiated in a different price environment may find themselves or their counterparts tied to agreements that are no longer as profitable as had been anticipated. Further exploration, appraisal or development of existing oil and gas assets may proceed on a slower and more conservative timescale. Parties may seek to get out of, or revise, a bad bargain. All of this can give rise to disputes – indeed, the recent low price environment has reportedly given rise to a number of disputes arising out of unpaid invoices or cost overruns, or the suspension, renegotiation or cancellation of oil exploration and drilling obligations.<sup>44</sup>

Price movements will continue to be volatile and difficult to predict. Future upward movements in oil and gas prices, or regional divergences in prices creating arbitrage opportunities, will very likely fuel an increase in disputes. Indeed, a study done by Chatham House shows a correlation between the oil and gas price level and the number of arbitrations – in other words, the highest incidence of arbitrations took place during the oil and commodity price boom from 2002–2008.<sup>45</sup>

Because gas is often sold in large volumes under 20- to 35-year long-term gas supply and purchase agreements, price movements and volatility often lead to very large and complex gas pricing disputes. In particular, many such contracts include a price review or price adjustment clause, which permits parties to revise the price formulae under their contract if a certain set of contractually defined criteria are satisfied.<sup>46</sup>

In Europe, various factors and developments have contributed to a proliferation of gas price arbitrations in the past decade involving disputes over the applicability and mechanics of such price review clauses. Commentators attribute this increase to the development of competitive natural gas markets and liquid gas hubs in some parts of Europe, which has led to a mismatch between spot prices for gas and the prices paid under long-term

gas supply contracts that predate those developments, which tend to be linked to oil and alternative fuels.<sup>47</sup> Another driver of the increase in such disputes has been the oversupply of natural gas owing to the development of shale gas in the US and China, and increased LNG imports from the Middle East and North Africa, which has led to a further divergence in the price-setting mechanisms in the oil and gas markets.<sup>48</sup>

Perhaps surprisingly, such gas price arbitrations have not been as common in the Asia-Pacific region – even though regional developments, including the dramatic spike in demand for LNG after the Fukushima nuclear power plant incident, have contributed to the increase in gas pricing disputes in Europe.<sup>49</sup> One commentator's review of public LNG disputes found that, out of 72 LNG disputes observed globally since 2010, there have been no reports of arbitrations brought by a Japanese, Chinese or Korean LNG buyer (even though Japan, China and South Korea together account for more than half of global LNG imports).<sup>50</sup>

Not much information is publicly available on the price revision mechanisms in gas or LNG supply and purchase agreements. However, commentators point to anecdotal evidence that long-term contracts in the Asia-Pacific region are traditionally set on the basis of Japan Customs-cleared Crude (JCC) prices and contain imprecise price review clauses that do not always provide for price revision through arbitration.<sup>51</sup> There are also suggestions that Asian market participants prefer to negotiate rather than arbitrate price adjustment issues.<sup>52</sup>

However, more recent reports suggest that regional participants are now more seriously considering drafting or relying on gas price review mechanisms in their long-term contracts, in part because of a growing divergence between sellers' and buyers' positions. This will increasingly be the case as the JCC prices compete with the development of emerging gas trading markets in Singapore and Shanghai,<sup>53</sup> which may develop in the future into gas hubs and a reference point for gas pricing. The European experience with liberalisation of gas markets and the emergence of gas hubs, and its impact on market behaviour and gas price reviews, suggests that gas price arbitrations will be a potential growth area for the future in the Asia-Pacific region.<sup>54</sup>

One important difference with Europe, however, is that the Asia-Pacific is not a single market, and does not have a coordinating political, legal or regulatory mechanism like the European Commission that can establish standards across-the-board for third-party access to infrastructure or to regulate anticompetitive contracting behaviour.<sup>55</sup> This means that the development of a regional gas hub may take longer than it did in Europe.

#### Other LNG disputes

The Asia-Pacific region has been referred to as the 'backbone' of the global LNG market,<sup>56</sup> and it alone accounts for over two-thirds of the global LNG growth.<sup>57</sup> In 2015, 72 per cent of globally traded LNG went to Asia, and as mentioned above, Japan, South Korea and China are the world's top three LNG importers.<sup>58</sup> Some commentators have predicted that, as a result of increasing demand from Australia, India, Indonesia and Malaysia, the demand for LNG in the region is expected to be double or more than double by 2030.<sup>59</sup>

Besides the gas price review issues referred to above, there are other issues specific to LNG ventures and contracts that can give rise to disputes. In particular, unlike pipeline gas, LNG can be transported and delivered to destinations other than those specified in the parties' contract, and can also be re-exported after it is delivered. This creates opportunities for market participants to

create additional value by sending LNG cargoes to a destination that has a higher price, which can give rise to disputes. For example, disputes have arisen out of destination restrictions or diversion provisions in LNG contracts, including whether a seller is entitled to refuse a diversion proposal, or whether and how profits on diverted cargoes are to be shared.<sup>60</sup>

As noted above, there is very little public information on LNG-related arbitrations involving parties from the Asia-Pacific region, and the anecdotal evidence suggests that parties have so far tended to avoid litigating or arbitrating disputes under such contracts. However, as LNG markets continue to mature in the Asia-Pacific, and trading volumes continue to increase, it is likely that more of such disputes will arise in the future.

Another area to watch is LNG-related construction disputes. Australia currently has almost US\$200 billion of LNG-related construction projects underway, which is part of a plan for Australia to overtake Qatar as the world's biggest LNG exporter by 2018.<sup>61</sup> However, the rush to build up Australia's LNG industry has also led to cost overruns of almost US\$50 billion at multiple facilities operated by major oil and gas companies.<sup>62</sup> Along with other factors, this has predictably led to a number of LNG-related construction disputes being submitted to arbitration. For example, in September 2016, Chevron initiated UNCITRAL arbitration in Perth against CPB Contractors, an Australian construction company, and Saipem, its Italian counterpart, regarding a disputed request for US\$1.5 billion in extra costs for constructing a jetty for the LNG project.<sup>63</sup>

#### State-to-state arbitration disputes

As energy and resource security becomes an increasing concern for states in the Asia-Pacific region – which is likely given volatile energy prices and the reliance of China, Japan and South Korea on oil and gas imports<sup>64</sup> – there may also be more state-to-state arbitrations that are related to the oil and gas sector.

State-to-state disputes can arise out of oil and gas resources that straddle contested state boundaries. For example, in 2009 the Permanent Court of Arbitration (PCA) in The Hague administered an UNCITRAL arbitration between the Sudan People's Liberation Movement/Army and the government of Sudan regarding the contested borders of the Abyei region, which is located within the Muglad Basin and contains a number of oil and gas subsurface resources.<sup>65</sup> Similar disputes have arisen regarding land boundaries in the Asia-Pacific, most notably in the Kashmir region where Pakistan, India and China have all put forward competing claims,<sup>66</sup> although such claims have not been submitted to arbitration.

Similar disputes can also arise out of oil and gas resources that straddle maritime boundaries or exclusive economic zones. In July 2016, a five-member PCA tribunal constituted under the 1982 UN Convention on the Law of the Sea (UNCLOS) rejected territorial claims by China in the South China Sea, with respect to the status of the Scarborough Shoal, Itu Aba and certain features in the Spratly Islands.<sup>67</sup> China has, however, consistently rejected the legitimacy of the PCA award, on the basis that territorial questions are not subject to UNCLOS,<sup>68</sup> and rather than comply with the award, China has instead stepped up its construction activities and presence in the South China Sea.<sup>69</sup> This goes to show how delicate and politically sensitive these boundary issues can be – and illustrates some of the limitations of the arbitration process in resolving such disputes.

Disputes could also arise out of agreements to share revenue between states. There has been a long-running dispute between Australia and Timor-Leste regarding a controversial Certain Maritime Arrangements in the Timor Sea (CMATS) treaty

that sets out a method for dividing revenue from the very large and potentially lucrative Greater Sunrise oil and gas reserve.<sup>70</sup> CMATS split revenues on a 50–50 basis and imposed a 50-year moratorium on Timor–Leste pursuing maritime boundary negotiations or claims. Timor–Leste sought to terminate the CMATS, and has previously argued that CMATS was unfairly negotiated because of espionage by Australia (though in January 2017 Timor–Leste withdrew espionage claims that had been raised in a PCA arbitration as part of attempts to explore a negotiated solution between the two countries).<sup>71</sup>

In September 2016, a five-member commission at the PCA found that it had jurisdiction to hear a compulsory conciliation proceeding under UNCLOS Annex V involving Australia and Timor–Leste, which would require Australia to negotiate with Timor–Leste regarding a permanent maritime boundary (Australia had expressly excluded disputes relating to sea boundary delimitation from compulsory arbitration and judicial settlement in 2002).<sup>72</sup>

Such UNCLOS Annex V conciliation proceedings are the first of their kind. The conciliation commission cannot impose an award on the parties, but is required to deliver a reasoned report after one year, which is to cover ‘all questions of fact or law relevant to the matter in dispute’ and recommendations for an amicable settlement.<sup>73</sup> It remains to be seen how effective such proceedings will be in resolving state-to-state boundary disputes. If an amicable resolution is not reached, arbitration may be the logical next step.

## Notes

- 1 The exact periphery of what constitutes the ‘Asia-Pacific region’ is difficult to define with precision, and depends in part on context. For example, the Asia-Pacific Economic Cooperation (APEC) forum includes Canada, Chile, Russia, Mexico, Peru and the US. For the purposes of this article, these countries are not treated as falling within the ‘Asia-Pacific region’.
- 2 See SIAC, 2016 Annual Report, ‘SIAC Announces All-Time Record Numbers for 2016’, available at <http://siac.org.sg/69-siac-news/514-siac-announces-all-time-record-numbers-for-2016>.
- 3 CIETAC, Statistics, available at [www.cietac.org/index.php?m=Page&a=index&id=40&l=en](http://www.cietac.org/index.php?m=Page&a=index&id=40&l=en).
- 4 Based on 2015 data, the Asia-Pacific region currently holds 28.1 per cent of the world’s proven gas reserves, and 14 per cent of the world’s proven oil reserves. The region produces 9.1 per cent, but consumes 34.7 per cent of the world’s oil. The region produces 15.7 per cent, but consumes 20.1 per cent of the world’s natural gas. See BP Statistical Review of World Energy June 2016, available at [www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf](http://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf), at pp. 6–9, 20–23.
- 5 International Centre for Energy Arbitration, *Dispute Resolution in the Energy Sector: Initial Report* (2015), available at [www.scottisharbitrationcentre.org/wp-content/uploads/2015/05/ICEA-Dispute-Resolution-in-the-Energy-Sector-Initial-Report-Square-Booklet-Web-version.pdf](http://www.scottisharbitrationcentre.org/wp-content/uploads/2015/05/ICEA-Dispute-Resolution-in-the-Energy-Sector-Initial-Report-Square-Booklet-Web-version.pdf), at p. 3.
- 6 *Ibid.* at p. 8.
- 7 BP Energy Outlook, *Country and regional insights – Asia Pacific*, available at [www.bp.com/content/dam/bp/pdf/energy-economics/energy-outlook-2016/bp-energy-outlook-2016-regional-insights-asia-pacific.pdf](http://www.bp.com/content/dam/bp/pdf/energy-economics/energy-outlook-2016/bp-energy-outlook-2016-regional-insights-asia-pacific.pdf).
- 8 P Weems, ‘A Look Inside the Recent Rise in LNG Disputes’, *Law360*, dated 4 August 2016, available at [www.law360.com/internationalarbitration/articles/823081/a-look-inside-the-recent-rise-in-lng-disputes](http://www.law360.com/internationalarbitration/articles/823081/a-look-inside-the-recent-rise-in-lng-disputes).
- 9 See BP Statistical Review of World Energy June 2016, available at [www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf](http://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf), at pp. 8, 22.
- 10 A Van Der Walt, P Wiese and D Jasmat, ‘Australia: Will Australia’s first dedicated Energy and Resources Arbitration Centre meet the needs of industry?’, dated March 2015, available at [www.mondaq.com/australia/x/382996/Will+Australia's+first+dedicated+Energy+and+Resources+Arbitration+Centre+meet+the+needs+of+indus](http://www.mondaq.com/australia/x/382996/Will+Australia's+first+dedicated+Energy+and+Resources+Arbitration+Centre+meet+the+needs+of+indus).
- 11 D Jones, ‘Construction Arbitrations Involving Energy Facilities: Power Plants, Offshore Platforms, LNG Terminals, Refineries and Pipelines’, in JW Rowley et al. (eds.), *The Guide to Energy Arbitrations*, 2015, *Global Arbitration Review*, 113, at p. 121.
- 12 See G Born, J Lim and D Prasad, 2016 SIAC Rules, *International Arbitration Alert*, dated 29 July 2016, available at [www.wilmerhale.com/uploadedFiles/Shared\\_Content/Editorial/Publications/WH\\_Publications/Client\\_Alert\\_PDFs/2016-07-29-2016-SIAC-Rules.pdf](http://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/WH_Publications/Client_Alert_PDFs/2016-07-29-2016-SIAC-Rules.pdf).
- 13 See 2016 SIAC Rules, Schedule 1.
- 14 See 2016 SIAC Rules, Rule 5.
- 15 2013 HKIAC Rules.
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