

Table of contents

| | |
|--|----|
| Introduction | 7 |
| I. An introduction to renewables projects | 11 |
| 1. What is renewable energy? | 11 |
| 2. The key players in renewables projects | 13 |
| 2.1 The project company or consortium | 13 |
| 2.2 The contractor(s) | 14 |
| 2.3 Operation and maintenance provider | 14 |
| 2.4 The offtaker of energy produced | 15 |
| 2.5 Other participants | 16 |
| II. Renewables projects: international law protection | 17 |
| 1. International investment protection | 18 |
| 1.1 Bilateral and multilateral investment treaties | 18 |

| | | |
|-------------|--|-----------|
| 1.2 | Substantive protections | 19 |
| 1.3 | Reference to arbitration | 20 |
| 2. | The renewables cases against Spain, Italy and the Czech Republic | 22 |
| III. | Common areas of dispute and contractual protections | 25 |
| 1. | Unique characteristics of renewables projects and the scope for disputes | 25 |
| 1.1 | Multiple players and contracts | 25 |
| 1.2 | New and emerging technology | 26 |
| 1.3 | No standardised contracts and the lack of precedent | 27 |
| 1.4 | Relevance of local law and the importance of stabilisation clauses | 28 |
| 2. | Common disputes in the main phases of a renewables project | 30 |
| 2.1 | Disputes in the development phase | 30 |
| 2.2 | Disputes in the construction phase | 31 |
| 2.3 | Disputes in the operation phase | 33 |
| IV. | International arbitration | 35 |
| 1. | What is international arbitration? | 35 |
| 2. | A final and binding decision | 36 |
| 3. | A decision that can be enforced outside of the parties' home jurisdictions | 38 |
| 4. | Arbitration is perceived as a more neutral forum for disputes involving parties from multiple jurisdictions | 38 |
| 5. | Appointing arbitrators with relevant expertise | 39 |
| 6. | Flexibility of process | 40 |
| 7. | Privacy and confidentiality | 40 |

| | |
|---|-----------|
| 8. The choice of forum is clear | 41 |
| 9. Types of relief available in arbitration proceedings | 41 |
| V. Getting the basics right: drafting an effective arbitration agreement | 43 |
| 1. The scope of the clause | 43 |
| 2. Multi-tiered arbitration clauses | 44 |
| 3. The seat (or legal place) of the arbitration | 45 |
| 4. The procedural rules that will apply | 46 |
| 4.1 <i>Ad hoc</i> arbitration | 46 |
| 4.2 Institutional arbitration | 46 |
| 5. The tribunal | 48 |
| 6. The choice of governing law | 48 |
| 7. The law of the arbitration agreement | 48 |
| 8. Provision for joinder and consolidation | 49 |
| 9. Provision for confidentiality | 51 |
| 10. The need for a quick resolution | 52 |
| 10.1 Emergency arbitration | 52 |
| 10.2 Expedited proceedings | 52 |
| 10.3 Summary disposal of unmeritorious claims | 53 |
| VI. Top tips in resolving renewables disputes through arbitration | 55 |
| 1. Use of experts | 55 |
| 1.1 Identification of remedies and quantification of losses ... | 56 |
| 1.2 The importance of early engagement | 58 |
| 1.3 Tribunal-appointed experts | 59 |

| | |
|---|----|
| 2. Joinder and consolidation | 59 |
| 3. Document production | 60 |
| 4. Case management techniques | 62 |
| 5. ADR techniques | 63 |
| 5.1 Mediation | 63 |
| 5.2 Facilitation, conciliation and expert determination of key issues | 65 |
| 6. Site visits | 65 |
| | |
| VII. Looking over the horizon: the future of renewables arbitrations | 67 |
| 1. Energy transition: more claims | 67 |
| 2. Modernised investment treaties | 68 |
| 3. The impact of COVID-19 | 71 |
| 4. Changes to arbitration | 73 |
| | |
| Notes | 74 |
| | |
| About the authors | 85 |
| | |
| About Globe Law and Business | 87 |