

# Focus: ENERGY DISPUTE RESOLUTION IN ARBITRATION



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## Outline

- Why and why not arbitration in energy dispute resolution?
- Typical issues in energy arbitrations
- A word about investment arbitration
- Three illustrative and current cases

## Why arbitration?

- Contracts in the energy sector tend to be international and long-term
- Arbitration is the preferred binding dispute resolution mechanism in international matters
- Arbitration is flexible
- Also: confidentiality
- Investment arbitration

## Why not?

- Arbitrators lack judges' coercive powers
- Problems of multiparty disputes

## Typical issues in energy arbitrations

- Change of circumstances in long-term contracts
  - Force majeure
  - Hardship
  - Price review

## A word about investment arbitration

- Bilateral investment treaties
- Multilateral investment treaty in the energy sector – the *Energy Charter Treaty* of 1994
- International Center for the Settlement of Investment Disputes (ICSID)
- Special issues of jurisdiction
- Special rights for investors – public international law

## Egypt - Israel natural gas transmission dispute

- **Parallel arbitrations**
- **Corruption allegations**
- **Does the US-Egypt BIT apply?**
- **A substantive violation of the US-Egypt BIT?**



## Vattenfall nuclear power stations in Germany

- Application of the *Energy Charter Treaty*
- An investment?
- Substantive rights
- Concerns about regulatory chill and a modern State's ability to introduce more stringent environmental regulations



# EU embargo on Syrian petroleum products

- Availability of investment arbitration?
- Potential effects of embargo on commercial contract rights



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**Thank you!**