



## **YONG PUNG HOW SCHOOL OF LAW**

Year 2023/2024 Term 2

### **LAW4062 INTERNATIONAL ENERGY DISPUTES (1 COURSE UNIT)**

(Long title: International Energy Disputes and Arbitration)

Course Convenor: Associate Professor of Law (Practice) Darius Chan

Guest instructors: Mr. Philip Tan (White & Case), Ms. Jennifer Lim (Sidley Austin)

#### **A. COURSE DESCRIPTION**

The energy industry is a significant player in the international dispute resolution sphere, spanning across investor-state, public international law, commercial and construction-related disputes. The course seeks to equip students with an in-depth understanding of issues relating to energy disputes, from both a substantive and practical perspective.

Participants will be introduced to the key features of energy projects and investments, the parties involved, and some of the unique characteristics of disputes arising in the energy sector. The course also involves a study of investment protection treaties and instruments in the energy sector, and related case law in international arbitration arising therefrom. Participants will then gain an understanding of the various strategic considerations on handling cross-border energy disputes, including how to prevent them from the outset, and managing a dispute across each stage of the dispute resolution process.

Participants will be taught by leading practitioners who are experienced in navigating energy disputes, who will share practical perspectives on the intersection between commercial and legal considerations. Participants will apply their knowledge through class presentations and group discussions. Participants keen on developing a practice specializing in energy disputes, and in particular, energy arbitration, gas/LNG price reviews and related investment treaty arbitration, will find this course of direct relevance.

#### **B. PRE-REQUISITE/MUTUALLY EXCLUSIVE COURSE(S)**

Pre-requisite: None, but it is strongly recommended that students complement this course with the course in international commercial arbitration (LAW406).

Mutually Exclusive: None.

## C. RECOMMENDED TEXT AND READINGS

### General Reading Materials

1. Energy Charter Treaty
2. Vienna Convention on the Law of Treaties
3. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”)
4. Singapore International Arbitration Act (Cap. 143A)

### Recommended Textbook

Students are strongly recommended to purchase the following text:

Maxi Scherer, *International Arbitration in the Energy Sector* (Oxford University Press, 2018)

### Supplementary Readings

1. William Rowley KC, Doak Bishop and Gordon Kaiser, *The Guide to Energy Arbitrations* (5<sup>th</sup> ed., Law Business Research, 2022)
2. James Gaitis, *Leading Practitioners’ Guide to Oil & Gas Arbitrations* (Juris Publishing, 2015)
3. James Freeman and Mark Levy KC, *Gas and LNG Price Arbitrations: A Practical Handbook* (2<sup>nd</sup> ed., Globe Law and Business, 2020)
4. Peter Cameron, *International Energy Investment Law* (2<sup>nd</sup> ed., Oxford University Press, 2010)

Additional materials will be provided on the eLearn platform.

## D. ASSESSMENT METHOD

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| Class attendance and participation                              | 10% |
| Individual class exercise and presentation                      | 20% |
| Individual take-home final paper (hypothetical/short questions) | 70% |

There will be no sit-down examination for this course.

**IMPORTANT: Plagiarism is strictly forbidden and will result in a failed grade or worse, as detailed below. All materials and ideas gleaned from other sources must therefore be appropriately attributed.**

### Academic Integrity

All acts of academic dishonesty (including, but not limited to, plagiarism, cheating, fabrication, facilitation of acts of academic dishonesty by others, unauthorized possession of exam questions, or tampering with the academic work of other students) are serious offences.

All work (whether oral or written) submitted for purposes of assessment must be the student's own work. Penalties for violation of the policy range from zero marks for the component assessment to expulsion, depending on the nature of the offence.

As a reminder on how to avoid plagiarism, students are encouraged to refer to this Library guide at: <https://library.smu.edu.sg/elearn>

When in doubt, students should consult the instructor of the course. Details on the SMU Code of Academic Integrity may be accessed at:

<http://smustudentcouncilofdiscipline.weebly.com/resources.html>

## **E. SCHEDULE (SUBJECT TO CHANGE)**

### **Week 1: 8 January 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Mr Philip Tan*

#### **❖ Introduction to the Energy Industry**

- Types of energy: fossil fuels vs renewables
- The commercialisation of energy: players, contracts and its value chain
- The life cycle of an energy project: from investment to dispute

#### **❖ Key Features of Energy Projects and Investments**

- Risk allocation among commercial parties
- Impact of domestic regulation (electricity tariffs etc.)
- Energy security and State concerns
- Managing local stakeholders

### **Week 2: 15 January 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Mr Philip Tan*

#### **❖ Causes of International Energy Disputes**

- Government regulation (or de-regulation)
- Fraud or corruption
- Market developments and commodity prices
- Disputes over territorial boundaries
- Force majeure

### **Week 3: 22 January 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Mr Philip Tan*

#### **❖ Commercial Energy Disputes (Upstream)**

- Shareholder, joint venture, and consortium disputes
- Disputes arising out of production-sharing contracts
- Joint operating agreement and licensing disputes

### **Week 4: 29 January 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Mr Philip Tan*

#### **❖ Commercial Energy Disputes (Mid- and Down-stream)**

- LNG/gas pricing disputes

- Take-or-pay, delivery and transport disputes
- Power and offtake contract disputes

**Week 5: 5 February 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Mr Philip Tan*

- Written exercise on LNG/gas price review

**Week 6: 12 February 2024 (Monday) 12pm – 3pm (SGT)<sup>1</sup>**

*Featuring Mr Philip Tan*

- Class presentation on LNG/gas price review

**Week 7: 19 February 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Ms Jennifer Lim*

❖ **Energy Disputes under International Law (I)**

- Choice of law and internationalized contracts
- Applicable legal instruments (e.g. the Energy Charter Treaty)
- Jurisdictional considerations
- Substantive standards of protection (expropriation, FET etc.)

**Week 8**

**Mid-Term Break**

**Week 9: 26 February 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Ms Jennifer Lim*

❖ **Energy Disputes under International Law (II)**

- Substantive standards of protection (cont'd)
- Damages
- Counterclaims in energy and environmental disputes

**Week 10: 4 March 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Ms Jennifer Lim*

❖ **Planning for Energy Disputes**

- Drafting dispute resolution clauses
- Treaty planning
- Investor-state protections (e.g. stabilization clauses, political risk insurance)

**Week 11: 11 March 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Ms Jennifer Lim*

❖ **Strategic Considerations in Energy Disputes**

- Negotiation, mediation, expert determination or arbitration?
- Interplay between investor-state and commercial arbitration
- Finding the right expertise: experts, judges and arbitrators

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<sup>1</sup> This will be rescheduled as Monday, 12 February 2024, is a public holiday, or it may be combined with the preceding class, depending on class enrolment.

**Week 12: 18 March 2024 (Monday) 12pm – 3pm (SGT)**

*Featuring Ms Jennifer Lim*

**❖ Resolution Outcomes in Energy Disputes**

- Entering into a settlement agreement
- Implementing an agreed outcome
- Enforcement considerations

**❖ Looking to the Future**

- Decarbonisation and its impact on traditional energy markets
- Climate change and environmental disputes

**Week 13**

Reading week

**Week 14**

Submission of Take-Home Final Paper

**Accessibility:** SMU strives to make learning experiences accessible for all. Students experiencing or anticipating physical or academic barriers due to disability should inform the instructor without delay. All communications regarding disabilities of any nature will be kept confidential. Students may also contact the university's disability services team with any questions or concerns about academic provisions or accommodations at the following address: [included@smu.edu.sg](mailto:included@smu.edu.sg).

**Digital Readiness for Teaching and Learning (DRTL)**

As part of DRTL, instructors may conduct lessons online via the Zoom platform during the term, to prepare students for online learning. During an actual emergency, students will be notified to access the Zoom platform for their online lessons. The class schedule will mirror the current face-to-face class timetable unless otherwise stated.

**Dropping A Course**

Students are reminded to follow the dates and procedures of add/drop modules found in <https://oasis.smu.edu.sg/Pages/RO/All-About-BOSS.aspx#parentHorizontalTab5>

UG and JD students need to drop the electives via BOSS unless otherwise instructed by the School for specific electives (e.g. Moots).

Students who fail to follow the correct procedures and stipulated timelines for dropping their modules will obtain a “W” or “F” grades as indicated on OASIS.

Do note that a “W” and ‘F’ grade is reflected **permanently** on a student’s transcript.

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