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ASIAN LNG PRICE REVIEW CLAUSES: CAN THE PARTIES AGREE TO DISAGREE?

A recurring question in Asian LNG price reviews is what happens if the parties cannot reach an agreement. While that question has been settled in Europe and North America, there is considerable uncertainty under many Asian LNG contracts as to whether a failure to agree in a price review can be referred to arbitration. The issue is becoming urgent as an estimated 20 million tonnes of Asian LNG comes up for price review in 2023 at a time of significant market disruption. What options will these parties have if they cannot reach an agreement?

We will first describe the evolution in Asian price review clauses across several generations of contracts stretching back to 1967. Many of the contracts still in operation today merely require the parties to discuss and review the price periodically. Some stipulate that the parties will agree a new price. Most do not expressly provide what will happen if no agreement is reached. We will therefore analyse to what extent agreements to negotiate or agreements to agree are enforceable. We will also consider whether any shortcomings in the price review clause can be overcome by the powers granted to an arbitral tribunal under the arbitration clause, the arbitration rules or the applicable law.

The paper is likely to be of interest to buyers and sellers who are party to Asian LNG contracts, or who are drafting new contracts, and will draw upon the authors' experience in conducting several of the very first Asian LNG price review arbitrations.

To view the full conference agenda, visit <https://www.lng2023.org/lng-programme-overview>