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Alaska LNG and Asian Investors: Avoiding Long-Term Contract Traps

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INTRODUCTION

Asian energy buyers seeking long-term security see both promise and peril in the Alaska liquefied natural gas project, developed by the Alaska Gasline Development Corporation and slated to begin construction in 2026. The US $44 billion venture will carry gas from Alaska's North Slope, liquefy it, and export it to Asia, offering shorter routes, stable upstream supply, and greater diversification than Gulf alternatives. Since assuming leadership in March, Glenfarne Group has already signed preliminary deals with buyers in Japan, Korea, Taiwan, and Thailand totaling 11 MTPA.

We explain how investors can treat an LNG contract as a strategic and dynamic instrument, rather than a static one, by strengthening its price-review, force-majeure, and arbitration clauses to avoid being locked into long-term commitments when market conditions shift.

CONTRACTUAL TRAPS IN LONG-TERM LNG AGREEMENTS

<u>Weak Price Review Mechanisms</u>

Many long-term LNG agreements include price-review mechanisms, yet few define what happens if parties cannot agree on a new price as market conditions evolve. Many Asian LNG agreements include price-review triggers only after long time-lags (e.g., a fixed number of years) and lack clear arbitration or deadlock-resolution paths if parties fail to agree on a new price. Some contracts contain no or limited termination rights in the event of prolonged force majeure or sustained non-performance, which undermines investor flexibility and increases downside risk.

This omission carries particular risk in Asia where buyers traditionally depend on relationship-based negotiations rather than clear procedures. In the absence of a defined contractual outcome, a buyer's remaining recourse is mainly to turn to the governing law. When the contract is silent or ambiguous, an arbitral tribunal will apply the contract's governing law to determine whether relief is available. Civil-law systems such as Korean or Japanese law formally recognize doctrines permitting termination when circumstances fundamentally change. However, in practice, these doctrines seldom offer commercial rescue. The bar for intervention is high. Relief is granted only when the change is so fundamental that it destroys the contractual equilibrium. In addition, many of the doctrines are rooted in broad good faith principles rather than a statutory test. So, in those cases, there is no fixed rule for what qualifies as a 'change in circumstances.' Everything turns on how the decision-maker interprets good faith in the case at hand.

An expressly drafted exit strategy, on the other hand, is a contractual safety valve that allows a buyer or investor to disengage or adjust when pricing no longer reflects market reality. This can take various forms: termination rights, step-down mechanisms, temporary volume reductions, or alternative pricing triggers that apply while negotiations continue. By defining these pathways up front, investors preserve leverage, predictability, and capital protection.

Consider a Japanese utility under a 20-year LNG agreement. The contract provides for a price review every five years if the regional spot market diverges significantly from the contract price. The parties would first attempt to renegotiate; if they cannot agree, the clause may send the dispute to arbitration. Absent a clear contractual pathway, the civil law change-in-circumstances doctrine would almost certainly not oblige the counterparty to renegotiate an already agreed price. The solution is to draft a time-bound exit option allowing either party to terminate or reduce contracted volumes if no new price is reached within a defined period.

<u>Force Majeure Exposure</u>

While a well-drafted termination clause gives investors control over when to exit, a force majeure clause only offers temporary relief unless it is expressly linked to a termination right after extended disruption. Force majeure clauses excuse performance when such unforeseen events as natural disasters, government actions, or supply disruptions make it impossible to deliver or receive LNG.

Yet even when prolonged force majeure makes continued performance commercially untenable, neither the traditional, static contract nor the governing law necessarily provides an exit pathway. This is particularly evident in many traditional Asian LNG contracts, which do not grant an automatic right to terminate even when a force majeure continues for an extended period. Instead, they often suspend obligations for as long as the force majeure continues. During the suspension, buyers may still need to maintain standby capacity, pay certain fixed charges, or absorb opportunity costs, effectively bearing commercial loss despite non-delivery.

Under Korean or Japanese law, force majeure may excuse non-performance and suspend obligations, but it does not guarantee a termination right of the contract unless that force majeure event qualifies as a 'change in circumstance' and the contract is deemed a long-term contract. Even then, the termination right is sparsely upheld, given the courts' tendencies to apply the principle of good faith with great caution to end a contractual relationship.

These limitations have driven a structural shift in modern LNG contracting. Increasingly, LNG contracts now include long-stop force majeure clauses that allow either party to terminate if the event continues beyond a defined period. This drafting practice gained momentum after COVID-19 and other major geopolitical disruptions. By linking force majeure to termination, investors secure both short-term relief and long-term certainty.

Limitations of Dispute Resolution

For investors, arbitration design is as critical as contract drafting itself. LNG agreements for exports from Alaska will be governed by neutral law such as Delaware, New York, or English law. Arbitration will be seated in a neutral jurisdiction such as under LCIA, ICC, or SIAC rules. While the governing law will determine the substantive legal principles, the seat of arbitration will determine the procedural framework and court supervision.

For Asian investors in Alaska-to-Asia LNG transactions, SIAC and ICC arbitrations seated in Singapore offer a balanced option of combining familiarity for Asian parties, a robust cross-border enforcement record, and a neutral seat in Singapore. Nonetheless, the optimal configuration will depend on the arbitral tribunal members, and furthermore on the alignment between the governing law, arbitral seat, and enforcement strategy to ensure commercial certainty and investor protection.

Across Asia, recent LNG arbitrations show that buyers are increasingly turning to formal dispute resolution instead of relying solely on informal negotiation. This shift reflects growing recognition of the risks when long-term agreements lack clear procedures for price review deadlocks, as well as greater confidence in tribunals' ability to handle complex LNG pricing and contractual disputes. However, it is crucial to understand that arbitration alone is not a failsafe. Tribunals are constrained by the language of the contract, the chosen governing law, and the commercial context. They will not rewrite fundamentally unbalanced bargains.

For Asian investors, the takeaway is that the leverage and outcomes hinge on how well the exit-strategy provisions are drafted. One poorly conceived clause can strip you of flexibility, diminish returns, and leave you with minimal recourse even if you pursue arbitration.

DRAFTING STRATEGIES

- Conduct a contract audit across all long-term supply/off-take deals: identify any arrangements without clear termination clauses following failed price review.

- Where missing, amend contracts to include step-by-step processes: negotiation → expert review/arbitration → termination or adjustment if unresolved within defined timeframe.

- Strengthen legal foundations: Ensure the governing law and arbitral seat are credible, and that the contract language gives the tribunal meaningful jurisdiction and sufficiently clears parameters to adjust terms and allows the buyer or investor an exit if such adjustment fails.

- Acknowledge limits of tribunals: Recognize that in Asia's evolving contractual environment—where tribunals are professional but may be restrained—the primary responsibility lies with the drafter. Weak drafting now means potential entrapment later.

- Reframe termination rights: View termination rights not as a last resort, but as a strategic instrument. Without them, you may lose flexibility and financial leverage just when market conditions change.

- Extend protections through structure: Although investors are not direct parties to the long-term sale and purchase agreements (SPAs), they should evaluate the terms and conditions during due diligence and, where appropriate, require that the SPA be referenced or incorporated into the investment or shareholders' agreements so that the investee is contractually bound by its risk-allocation framework.

CONCLUSION

For investors active in Asia's long-term supply markets, early implementation of clear escalation and exit mechanisms allows the LNG contract to operate as a strategic asset rather than a constraint. The Alaska LNG project, and the contracts that underpin it, will test how far drafters can future-proof the bargain.

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Peter & Kim is a specialist arbitration firm with offices in Geneva, Zurich, Sydney, Seoul, Perth and Singapore. We support clients globally through a cohesive cross-border team structure offering a depth of common and civil law expertise that is grounded in decades of combined experience at partner level in international arbitration proceedings (including ISDS cases) and in advising and representing commercial and government clients in arbitration-related proceedings before State Courts.

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