

The Future is Form:

AIEN and IBA Launch Joint Collaboration on New Model Clauses for a Successful Energy Transition

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The Association of International Energy Negotiators (AIEN) and the International Bar Association's Oil and Gas Law Committee (IBA-OGC) announce the launch of the joint project to develop Energy Transition Model Clauses.

The project will deliver model clauses that will be standard contractual provisions the oil and gas industry can rely on to implement their emissions reductions and decarbonization goals and that will help enable an energy transition that is timely, just, sustainable, and efficient.

While much may be debated about the "energy transition", there is no longer any question that we need such a transition to effectively reduce the climate change-inducing emissions from our global economy. The oil and gas industry must be part of the energy transition – and, indeed, many oil and gas companies already are. To be successful, however, the transition will require every company actor in not only the oil and gas industry but in the entire private sector.

Companies rely on contracts: contracts determine where money flows; what standards must be followed; who has a cause of action, and what the remedy is. To drive emissions reductions in oil and gas operations as well as to fast-track technologies that can help the transition of the sector will require clear, enforceable contracts among the oil and gas companies and their partners, suppliers, contractors, financial institutions, and others. The Energy Transition Model Clauses are meant to fill this gap: shovel-ready clauses that meet industry and public needs, that are fair and balanced, and are delivered by organizations that have the credibility and the right skills.

Proof of Concept: Today's Model Contracts of the Oil and Gas Industry

We already have a proof of concept: the model contracts used by the oil and gas industry today. The AIEN, an independent not-for-profit professional membership association that supports international energy negotiators around the world and enhances their effectiveness and professionalism in the international energy community, is already known worldwide for its model contracts.

These model contracts, 21 in total and more in progress, are developed by legal and commercial experts who have learned the hard lessons at the negotiating table. They are, above all, practical documents, with options and alternatives as well as guidance notes that enable parties to craft and execute a contract that is fit for purpose. As such, they have been and continue to be widely relied upon in the energy industry both by private industry participants and by national governments.

The Joint Operating Agreement, Unitization and Unit Operating Agreement, Farmout Agreement: these and AIEN's many other form contracts have been the basis for executing some of the largest oil and gas projects in the world. With the Energy Transition Model Clauses, AIEN and the IBA-OGC will collaborate to further expand the model forms available to the industry, to include standard contractual provisions that the energy industry, and the oil and gas industry in particular, can rely on for decarbonizing their operations and to deploy low-carbon technologies at commercial scale.

A Collaboration For Credibility: The IBA's Advancement of Rule of Law

For these model clauses to be effective, they must not only be considered credible by parties to the clauses – creating clear, balanced and enforceable obligations – but also considered credible by the global community. For these model clauses to be effective, then, financing bodies, shareholders, local communities, public interest organizations, and the public must see them as genuinely and effectively driving real emissions reductions. This credibility will only come when the clauses are a product of an inclusive process that brings a diversity of perspectives – from not only a private sector energy company perspective but also from all the key stakeholders that create the ecosystem of oil and gas decisions.

The IBA, with more than 80,000 individual international lawyers from most of the world's leading law firms and some 190 bar associations and law societies spanning more than 170 countries, was created to advance global stability and peace through the administration of justice. Its mission is global: to promote the rule of law worldwide, "the principles and aims of the United Nations in their legal aspects". The IBA's Oil and Gas Committee brings a deep bench of expertise in the drafting and negotiating of contracts in the oil and gas sector. The IBA's expansive membership enables a genuinely global perspective and inclusive process to what is a truly global challenge that concerns all of us.

Time Is of the Essence: The Initial Model Clauses

Every contract lawyer knows the term "time is of the essence". The clauses that have the best chance of the broadest early buy-in and acceptance in the industry are those that are functional and can be deployed in a timely manner. While many "oil and gas" companies are already becoming "energy" companies, broadening their portfolios to include projects such as offshore wind and electrification, a gap remains for transition model clauses specifically tailored for the oil and gas industry and its energy transition work that leverage the industry's expertise in developing commercial deals, building infrastructure and safely moving molecules.

For that reason, the Energy Transition Model Clauses joint effort will initially focus on three types of model clauses:

1. Operational Emissions Model Clauses to enable oil and gas companies to reduce the emissions of their oil and gas operations, including through the supply chains of those operations;
2. Hydrogen/Low Carbon Energy Sources Model Clauses to enable oil and gas companies to tap new sources of low carbon or zero (or near-zero) carbon sources of energy; and
3. CCUS and Carbon Market Model Clauses to enable oil and gas companies to reduce a project's "carbon footprint" through the addition of carbon capture and storage capabilities and purchase of credits that remove carbon from the environment.

Working Across Generations, for Future Generations

In meeting the objectives of this joint effort to facilitate decarbonization and energy transition of the oil and gas sector and assist companies across that sector meet their decarbonization goals, we feel that active participation from young lawyers and negotiators is essential for the project's long-term success.

The AIEN and IBA-OGC seek experienced practitioners, as well as those young and young-at-heart, to get involved and make a difference through this important project. The main engine of creation will be the Working Groups in each of the three new areas. Participants in these Working Groups will meet to discuss and craft clauses along the lines of best practices of standards development organizations. Co-Chairs will moderate the Working Groups to develop model clauses to be adopted on a broad consensus basis that reflects multiple and balanced viewpoints. Overseeing and supporting the Working Groups will be the Steering Team, with equal representation from the AIEN and IBA-OGC. The authors of this article will serve as initial members of the Steering Team to kick off the joint project.

In the coming weeks, we will announce the formation of the Working Groups and details on how to sign up to participate. We look forward to advancing this project to provide a platform for the Energy Transition Model Clauses to play their part in achieving meaningful and timely emissions reductions in our industry with broad support from the private, governmental and non-governmental stakeholders.