



CENTRE FOR ADVANCED RESEARCH
& TRAINING IN **ARBITRATION LAW**



THE 2ND CARTAL CONFERENCE ON
INTERNATIONAL ARBITRATION
“Looking East: Arbitration in the Asian Age”
September 30 – October 1, 2017

Organising Partner

**Baker
McKenzie.**

Institutional Partners



NATIONAL LAW UNIVERSITY, JODHPUR

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National Law University, Jodhpur

THE CONFERENCE

The Centre for Advanced Research and Training in Arbitration Law (**'CARTAL'**) at National Law University, Jodhpur endeavours to further academic research and study in the field of arbitration and dispute resolution. Since its inception, CARTAL's initiatives have provided an impetus to dialogue and discourse regarding arbitration in India. The workshops, guest lectures and conferences organized by CARTAL have provided a platform for academicians, professionals and students to interact and discuss contemporary issues in arbitration law. In line with its objectives, the Centre proposes to organize the '2nd CARTAL Conference on International Arbitration, 2017' (**'Conference'**). CARTAL's first international arbitration conference, 'Arbitration at Crossroads' (October 2016) was organised in association with Baker McKenzie and was institutionally supported by ICC, SIAC, HKIAC, MCIA and CIArb. This conference addressed themes including developments in international investment arbitration, transparency and confidentiality concerns in arbitration, institutional arbitration in India and the overhaul of India's arbitration law.

The theme of the 2nd Annual International Arbitration Conference is "***Looking East: Arbitration in the Asian Age***". The Conference shall be hosted over a two day period at National Law University, Jodhpur in India. The definition of East for the purpose of the Conference encompasses favoured and emerging seats of arbitration in North East, South, South East and Central Asia. The main aim of the Conference is to study the differing success seen by various regions in Asia in adapting to the practice of international arbitration. The panel discussions will act as a platform for practitioners and academicians to come together to discuss the new developments and trends in the practice of international arbitration in the region. The Conference will have discussions focussed on four major themes, each centred on recent developments or emerging issues in arbitral practice in the East:

1. International Arbitration across Legal and Economic Cultures

This panel highlights the need for arbitration to assimilate different social, legal and cultural paradigms. The movement of international arbitration towards emerging seats in the East signals the need for a two-way shift. One, the overhaul of domestic legislation to provide a legal environment more conducive to international arbitration, and two, the recognition and integration of cultural, economic and social differences typical to the Asian Age in norms of international arbitration. It is important that the best practices of favoured seats across the world be incorporated in emerging seats in Asia taking into account the elements that may make arbitration practice quintessentially 'Asian'. The panel will also examine the legal and infrastructural framework available for international arbitration in the favoured seats in Asia like Hong Kong and Singapore and explore the necessity of replicating elements of this framework in emerging seats.

Further, this panel will discuss the question of diversity in international arbitration and the broader representation of Asian arbitrators and centres, not limited to Hong Kong and Singapore. This can help enhance the effectiveness of international arbitration and quality of awards.

2. The BRICS Dispute Resolution Forum – Optimizing Efficacy and Efficiency

The BRICS Dispute Resolution Forum would be a landmark coming together of five of the world's biggest arbitration markets. However, the unique economic and legal cultures of each of the Member States pose challenges in the conceptualization and working of such a forum. This panel will question the necessity of the forum and discuss the need for carving out a distinct identity for it to distinguish it from existing avenues. The issues of harmonization of domestic rules governing arbitration and a concrete system for enforcement of awards in all BRICS nations will be discussed. Several preliminary obstacles exist in the development of this forum. For instance, arbitral awards from Brazil and South Africa are not yet enforceable under the Arbitration and Conciliation Act, 1996 as these countries have not been officially notified by India. The panel will address the need to identify and solve these obstacles.

The panel will also address the necessity to provide training and expertise within the BRICS countries to ensure that each nation builds a repertoire of quality arbitrators. The need for a structure that ensures representation from countries outside the BRICS to guarantee unbiased and impartial adjudication will be explored. Finally, parallels of regional arbitration frameworks from Europe and Latin America will be studied as potential roadmaps for the development of the forum.

3. Exploring the varying dimensions of Public Policy in International Arbitration

This panel explores the different ways in which the public policy exception has been utilized by countries in international arbitration. The panel will analyze the gains achieved by intervention based on this ground and the costs associated with it. It has been widely debated if some States use the public policy defence as disguised intervention. The panel will broadly explore the incorporation of public policy into domestic statutes in the Asian States and study if it has been used to veil judicial interference. The panel will examine a notion of public policy that allows access to justice to all parties, and is inclusive of interests unique to the Asian regions of the trading South. However, this must be done in a manner conducive to Asia's ever growing status as a business and investment destination. The Panel will discuss this continued evolution of public policy, and its need for the economic solvency of the country as a whole.

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This panel will also examine the varying content of public policy in favoured and emerging seats. An important question is how the ambiguity regarding this content will affect the choice of seat. In this regard, the approach adopted by the judiciary across jurisdictions is pertinent. Finally, the increasing use of the ‘international’ public policy exceptions in place of the broader nationally defined public policy exceptions will be considered.

4. Third Party Funding (TPF)

This panel will address one of the most exciting and controversial developments in international arbitration over the past year. Despite traditionally being quite wary of litigation funding, recent events have marked a sharp shift in how the Asian arbitration community perceives third party funding. In 2017, Singapore passed the Civil Law Amendment Bill which allows the financing of international arbitration through third party funding, in a sharp shift from its earlier stance banning TPF. The SIAC Investment Arbitration Rules, 2017 specifically regulates TPF and is the first instance of an arbitral institution addressing this issue. In Hong Kong, Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2017, approved in June 2017, made amendments to the Arbitration ordinance, to allow third party funding in arbitration. The shift in stance on third party funding in these two prominent arbitration hubs can pave the way for greater clarity of stance related to TPF in other Asian arbitration centres including India, which tacitly accepts TPF.

Questions that will be examined by the panel include the relevance of TPF in the Asian markets, the likely effects of the above developments in this regard, the risks associated with TPF, possible conflicts of interest and the issue of security for costs. A pertinent issue the panel will discuss is the regulation of TPF in international arbitration in light of the new developments. The panel will also discuss what a good case for funding could be and the best ways to adapt funding products to meet a client’s requirements. Finally, the panel will discuss the allocation of third party funding costs in arbitral awards, an issue that has risen in importance with the judgement of the *Essar Oilfields Services Ltd v. Norscot Management Pvt Ltd*¹ that the successful party can recover the costs of a third party funding agreement from the other party.

Participants

The Conference will be attended by select students from top national law schools across India. Further, CARTAL will invite a limited number of practitioners and academicians to attend the Conference as delegates.

¹ *Essar Oilfields Services Ltd v. Norscot Management Pvt Ltd*, [2016] EWHC 2361 (Comm).

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NATIONAL LAW UNIVERSITY, JODHPUR

National Law University, Jodhpur is one of the premier law universities in India whose endeavour is to develop legal professional skills par excellence. The University is situated in the vibrant state of Rajasthan. Jodhpur itself is a widely popular tourist destination, globally recognized for its majestic heritage and historical significance. The University has excelled in traditional legal education and inculcates an innovative hands-on approach to the study of emerging legal fields. To this end, the University and CARTAL regularly organize guest lectures and roundtable conferences on topical issues in arbitration.

The University enjoys an unparalleled reputation for its excellent hospitality and management capabilities and is fully equipped with the requisite facilities required for the organisation of such events, such as:

- i. A world class auditorium with a seating capacity of 250 and equipped with the latest audio-visual facilities;
- ii. Conference rooms equipped with modern video-conferencing facilities ;
- iii. On-campus accommodation for upto 15 dignitaries as well as upto 50 students from outstation universities;
- iv. Round the clock availability of multi-cuisine food;
- v. Frequent bus shuttle service connecting the University to the city of Jodhpur; and
- vi. Arrangements with internationally renowned hotels in and around Jodhpur for accommodation at concessional rates.

In addition, the city of Jodhpur is well connected with daily connections by air, rail and road.

CARTAL

The Centre for Advanced Research & Training in Arbitration Law (CARTAL) has been set up by National Law University, Jodhpur to promote research and scholarship in the field of arbitration. CARTAL is headed by Executive Director Ms. Nidhi Gupta with Prof. Martin Hunter acting as Honorary Chairman. The Centre's Board of Advisers includes some of the most pre-eminent personalities in the field of arbitration such as Mr. Gary B. Born, Mr. Emmanuel Gaillard, Prof. Gabrielle Kaufmann-Kohler and Mr. Alexis Mourre. CARTAL comprises a dedicated body of Faculty members and students, who are responsible for organisation of the events hosted by the Centre.

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INDIAN JOURNAL OF ARBITRATION LAW

The Centre publishes the Indian Journal of Arbitration Law ('IJAL'), a bi-annual, open-access, student-run journal. The IJAL is widely recognized as the leading Indian dispute resolution journal and an excellent source of reference in the field. The IJAL endeavours to cover a wide range of subjects in the field of arbitration and has maintained a focus on transnational debates in international commercial arbitration and investment treaty arbitration. The IJAL has successfully published five volumes and continues to host contributions from globally renowned experts. IJAL is indexed on HeinOnline, Kluwer Arbitration and Westlaw.

More information about IJAL, CARTAL, its Board of Advisers and members can be found at <http://ijal.in>.

ORGANISATIONAL EXPERIENCE & ASSOCIATIONS

CARTAL has successfully organized several events in the past and continues to do so with regular frequency.

i. The First Annual CARTAL Conference on International Arbitration – “Arbitration at Crossroads”

CARTAL and IJAL, along with Baker McKenzie organised a two-day international conference on the state of arbitration, “Arbitration at Crossroads”, at National Law University, Jodhpur (India) on October 15-16, 2016. The Conference was institutionally supported by ICC, HKIAC, SIAC, MCIA and CIArb. The Conference was a resounding success with panellists who are experts in international arbitration and participants from law schools across the country. The detailed report of the first annual conference can be found [here](#).

ii. The 2nd Gary B. Born Essay Competition on International Arbitration 2017

CARTAL has organised an international essay competition with the support and patronage of Mr. Gary B. Born. The competition, now in its second edition, has been conceived to encourage law students to write on issues such as the due process paranoia in international arbitration, reforming the ISDS system under the ICSID Convention and international mandatory rules and their effects on the enforcement of arbitration agreements. The brochure for the competition can be accessed [here](#).

iii. Annual Arbitration Lecture:

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CARTAL organizes an annual lecture on arbitration. For 2016, Mr. Ajay Thomas, formerly Registrar of the London Court of International Arbitration (India), was invited to deliver a lecture on the 'Future of Institutional Arbitration in India'.

iv. Special Lecture Series:

CARTAL has regularly invited experts to deliver lectures on topical issues in arbitration. Most recently, Mr. Sivaramakrishnan M.S., practising advocate at the Karnataka High Court, delivered lectures on the issue of 'Joinders, Consolidation and Multi-Party Arbitrations'. Since its inception, the Centre has hosted several distinguished speakers including Prof. Martin Hunter, Mr. Shishir Dholakia, Mr. Promod Nair and Prof. Prabhash Ranjan.

v. Round Table Discussion:

CARTAL has also organized round table discussions from time to time. In 2012, Prof. Martin Hunter chaired a discussion on the topic 'Can India become the hub of international commercial arbitration' and, in 2013, Mr. Hiroo Advani led the discussion on 'Running Arbitration from beginning to end'.

vi. Arbitration Training Workshop:

CARTAL organized a one-day Arbitration Training Workshop on arbitral procedure and award writing in association with the Chartered Institute of Arbitrators (CI Arb) India Branch and Advani & Co. in 2012.

vii. Mediation Training Workshop:

CARTAL in collaboration with BRIDGE Mediation LLC, USA organized a workshop on mediation in October 2012.

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