

MARKET PRACTICE FOR INDIA DISPUTES CLAUSES REVERSED BY SUPREME COURT

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Legal Briefings

Investors in India have traditionally accepted arbitration in India when contracting through onshore subsidiaries. Commercial parties (whether foreign or domestic) preferring arbitration in Singapore or London were restrained by market perception that arbitration in India was mandatory for contracts between two Indian entities. The Indian Supreme Court has now rejected this view, overriding authority to the contrary.

Commercial parties want the efficiency and predictability of arbitrating in one of the world's leading arbitral seats. The historic position deprived parties of their choice of a neutral venue. While arbitration in India continues to develop, and a new generation of Indian arbitrators are bringing international best practice to their mandate, it also involves the risk of exposure to Indian court practices, judicial intervention and related delay.

The Supreme Court of India has now comprehensively rejected any rule that arbitration in India is mandatory for two Indian parties, and has cast doubt on the perception that Indian substantive law is mandatory when such disputes are arbitrated offshore. You can read more analysis of this landmark decision in *PASL Wind Solutions v. GE Power Conversion India* [here](#).

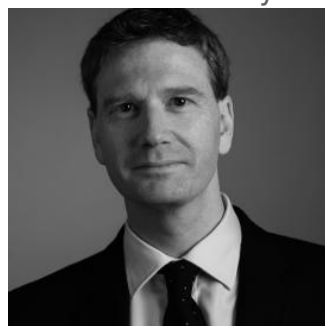
We predict a boom in contracts between Indian parties selecting arbitration in Singapore or London. Amongst the arbitral institutions, the SIAC, ICC and LCIA will benefit most. When negotiating arbitration clauses, those wishing to choose offshore arbitration can confidently reject the argument that arbitration in India is mandatory. A record number of Indian parties have arbitrated their disputes in Singapore in recent years, and we expect this trend to further accelerate.

Whilst this change will primarily affect international parties acting through local subsidiaries in India, we are also hearing from our Indian clients that they are more actively considering offshore arbitration for high value domestic relationships, to avoid the well-known disadvantages of litigating in India.

Our India disputes practice regularly advises on India related disputes, particular those with an English or Singapore law element or requiring specialist sector knowledge. We bring deep experience in the Indian business and cultural landscape with the benefits of world-class disputes practice, and market-leading stature in the key arbitration markets.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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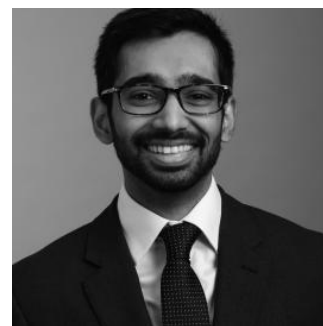
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