

7TH GARY B. BORN ESSAY COMPETITION
ON INTERNATIONAL ARBITRATION, 2022

ORGANISED BY:

**Centre for Advanced Research and Training in Arbitration Law
&
Indian Journal of Arbitration Law,
National Law University, Jodhpur**

THEMES:

- (I) Harmonising principles on joinder and consolidation: necessity or an issue taken too seriously?**
- (II) Reconciling arbitration with insolvency proceedings and corporate restructuring**
- (III) Third-party funding and disclosures in international arbitration.**

ABOUT THE ORGANISERS

National Law University, Jodhpur

The National Law University, Jodhpur [“**University**”] is one of India’s top law schools. It was established in 1999 as part of a vision of excellence in legal education through innovative methods of learning. The diverse student body consists of some of the most meritorious students from the country, selected on the basis of a competitive entrance examination. The teaching faculty comprises both young and experienced academicians who have received their education at leading universities in India and have contributed to India’s growing body of legal academia.

Centre for Advanced Research and Training in Arbitration Law

The Centre for Advanced Research and Training in Arbitration Law [“**CARTAL**”] is established by the University to promote research and scholarship in specialized fields of arbitration law. It seeks to empower students with a theoretical and practical understanding of arbitration law by providing a platform for academicians, professionals, and law students to interact and discuss contemporary issues in arbitration law. The mandate of CARTAL is achieved by the organization of workshops, certificate courses and guest lectures to facilitate the understanding of such issues.

CARTAL also organises the reputed annual Gary B. Born Essay Competition on International Arbitration and the annual CARTAL Conference on International Arbitration. For further information, please see the report of the previous edition of the conference, available [here](#).

Indian Journal of Arbitration Law

The Indian Journal of Arbitration Law (“**IJAL**”) is a bi-annual, open-access journal, published by CARTAL. It is the leading Indian journal on arbitration law, with consistent focus on topics of global interest and relevance. IJAL has successfully published ten volumes and continues to host contributions from globally renowned experts. All the articles from the journal’s archives are available [here](#). It is also available on Kluwer Arbitration, HeinOnline, WestLaw, and SCC Online.

IJAL’s Board of Advisers comprises some of the preeminent authorities in international arbitration, including Prof. Gary B. Born, Mr. Alexis Mourre, Mr. Fali Sam Nariman, Prof. Gabrielle Kaufmann-Kohler, Prof. Loukas Mistelis, Prof. Martin Hunter, Prof. W. Michael Reisman, Prof. Laxmi Jambholkar, Mr. Pramod Nair, and Mr. S.K. Dholakia.

For more information, please visit our website (ijal.in) or write to us at editors@ijal.in.

ABOUT THE COMPETITION

In keeping with previous years, CARTAL is organising the 6th Gary B. Born Essay Competition on International Arbitration [“**Competition**”] to encourage research and literature in international arbitration. The Competition has the gracious support and patronage of Prof. Gary B. Born, who is the chair of the International Arbitration Practice Group of Wilmer Cutler Pickering Hale and Dorr LLP. Prof. Born has participated as counsel in more than 675 international arbitrations, including four of the largest ICC arbitrations and several of the most significant *ad hoc* arbitrations in recent history. He is widely regarded as the world’s preeminent authority on international arbitration, having been ranked for more than 20 years as one of the world’s leading international arbitration advocates and the leading arbitration practitioner in London.

The themes of the sixth edition of the competition aim to foster research on some of the contemporary developments in international arbitration, and are listed below:

1. Harmonising principles on joinder and consolidation: necessity or an issue taken too seriously?

In recent years, mounting complex multi-party disputes have presented several administrative challenges for arbitral tribunals. To save time and costs by avoiding parallel proceedings that pose the risk of conflicting decisions, joinder of third parties and consolidation of arbitral proceedings have become alluring options for parties engaged in commercial disputes. Recently, arbitral institutions through their respective rules such as, *inter alia*, the London Court of International Arbitration [“**LCIA**”] Rules, 2020, International Chamber of Commerce [“**ICC**”] Rules, 2021, and International Centre for Dispute Resolution [“**ICDR**”] Rules, 2021, have provided freer rein to the parties and tribunals to enjoin parties and consolidate proceedings. Although broadening their ambit mitigates some procedural complexities, it also gives rise to new concerns and pitfalls. Consolidation and joinder can be questioned on basis of lack of parties’ consent, which is the very core of arbitration. Such lack of consent or autonomy to arbitrate or choose the process of arbitration can manifest in various forms throughout the arbitration, lasting up to the enforcement before courts who may have diverse opinions on these unchartered questions. For instance, enjoined parties or parties from consolidated arbitrations are often devoid of choosing arbitrators while the other parties exercise this right. This may also form a ground for lack of equality between parties, thereby risking an unenforceable award under Article V of the New York Convention. Participants may analyse if the benefits and need of consolidation and joinder in today’s complicated multi-party and multi-contract disputes outweigh these and other potential issues that persist even under the evolving rules of arbitral institutions. Participants are also encouraged to explore the grounds of difference between differing rules of arbitral institutions regarding the same and investigate whether a convergence of institutional and national rules would benefit the aim of efficient, fair and flexible dispute resolution.

2. Reconciling arbitration with insolvency proceedings and corporate restructuring

Insolvency law and arbitration are rooted in conflicting legal concepts. On one hand, insolvency law seeks for a centralised approach to the determination and enforcement of parties’ liabilities. Principles of arbitration, on the other hand, allow contractual parties to select their own forum to resolve disputes in an entirely decentralised manner. Due to this inherent contradiction, arbitrability of insolvency disputes is viewed differently in different jurisdictions. There exists a fundamental dichotomy between arbitration and insolvency, with the former designed to be a private and confidential process and the latter a mostly public, national process that may serve the interests of the public. The dilemma hinges around questions such as – should an ongoing

arbitration be suspended upon the initiation of the insolvency proceeding? or should contractual claims be settled through arbitration as opposed to the insolvency claims-resolution procedures?

The advent of the pandemic has led to an increased number of corporate insolvencies in key industries around the globe. However, insolvency and bankruptcy, per se, are mostly intra-national matters, even though wide-ranging implications may be noted upon international transactions as well as dispute resolution procedures. In this light, the multiplicity of national procedures as regards insolvency proceedings is problematic, even as national jurisprudence around the world evolves rapidly in conformity with the United Nations Commission on International Trade Law [“**UNCITRAL**”] Model Law on International Commercial Arbitration 1997 in response to the pandemic. The latest developments in this regard include the (i) New Brazilian Bankruptcy Law in December 2020; (ii) the UK draft Corporate Insolvency and Governance Act in 2020; (iii) the Singapore Insolvency, Restructuring and Dissolution (Amendment) Act passed in November 2020. Efforts at international co-operation and assistance also include the drafting of the IBA Toolkit on Insolvency and Arbitration. Participants may inquire into the broader policy dichotomy or nuances of this intersection, including issues such as automatic stays, burden of proof, substitution of parties etc. They may also investigate the effectivity of the UNCITRAL Model Law 1997, which does not as such unify substantive approaches. In this context, assessing the viability of unifying frameworks and their encroachment upon national policies may be explored.

3. Third-party funding and disclosures in international arbitration.

In recent years, there has been a rise in instances of third-party funding in arbitration, which essentially consists of *quid pro quo* financial gain in the event of a successful outcome that may be a share of damages either in the final award or the settlement agreement. Such funding eases the financial burden of the funded party, and as a result, making it possible for the party to pursue the arbitral proceeding. The funding provides an investment opportunity to the investor based on the risk of the investment borne. The concept of third-party funding evoked mixed reactions, with some jurisdictions legislatively recognizing it as permissible, meanwhile others considering such agreements invalid. However, the primary dilemma faced herein is whether a funded party is required to disclose the existence and/or the terms of a third-party funding agreement to the arbitral tribunal. Recently, Rule 14(1) has been added in the International Centre for Settlement of Investment Disputes [“**ICSID**”] Arbitration Rules, which provides that a written notice must be filed by the funded party disclosing the name and address of the funder. Certain jurisdictions, such as Singapore, also place the burden of disclosure upon the counsel as opposed to the funded/funding party. The participants may examine jurisdictional differences, such as the funded party’s duty to disclose the source of their funds, the extent to which such a disclosure must be made, the funder’s rights and obligations, especially in case of an unfavourable award, the arbitral tribunal’s powers to direct such a disclosure, and concerns of enforcement, confidentiality, feasibility, and fairness. The participants may also suggest possible solutions which can be harmoniously applied against the backdrop of either international arbitration or a jurisdictional framework.

RULES OF THE COMPETITION

- There is no registration fee for the competition.
- The competition is open to all students enrolled in an undergraduate or post graduate programme in law (B.C.L., J.D., LL.B., LL.M., or their local equivalent) in any recognised university across the world. Students who have completed an above-mentioned programme or their equivalent in 2021, and post graduate students who are selected for and will be enrolled in any such programme for 2021-2022 are also eligible to participate.
- To participate in the competition, interested students must e-mail a copy of their completed essays to editors@ijal.in by **October 30, 2022, 23:59 hours** (Indian Standard Time, GMT +5:30). Late submissions shall not be accepted under any circumstances.
- No part of the essay should contain any form of identification of the participant.

SUBMISSION GUIDELINES

- The essay must be submitted in Microsoft Word document format (.doc/.docx).
- The essay must contain an abstract, not exceeding 250 words. It must indicate the theme.
- A participant can submit an entry for one theme only. Co-authorship is not permitted.
- The word limit is 4500–6500 words including footnotes.
- The essay must be accompanied by a separate document containing the following information about the participant: (i) full name of the participant, (ii) theme chosen, (iii) participant's current year of study and name of the degree pursued, (iv) name and full address of the participant's university, (v) name and full postal address of the participant, (vi) phone number of the participant, and (vii) e-mail id of the participant.
- The essay must be original and bona fide work of the participant.
- The essay must be written in English.
- Footnotes must follow the Bluebook system of citation (Harvard, 20th edition).
- The essay should not be submitted for any other competition and/or for any other purposes.

OTHER RULES

- By entering the competition, the participants agree to indemnify the organisers from and against all claims, suits and damages based on any claim of copyright infringement or plagiarism or unauthorised use.
- The essay shall be property of the University, which reserves the right of publication of the same in any book, journal, or in any other manner as it may deem appropriate, without providing any royalty or compensation.
- The results of the Competition shall be announced in the last week of November 2021 (tentatively). The organizers may, at their discretion, hold an award ceremony to release the results on the prescribed date or otherwise, alone or in conjunction with another event.
- Any further publication after declaration of results shall only be pursued after express permission from the organisers.
- The winners of the Competition authorize the organizers to use their names and photos, if required, for the purpose of publicizing the Competition and its results.

PRIZES

First Prize	<ul style="list-style-type: none"> • Cash prize of USD 400, • Letter of Appreciation from Prof. Gary B. Born, • Signed copy of a book authored by Prof. Born, and • An opportunity to be considered for publication in the next issue of IJAL.
Second Prize	<ul style="list-style-type: none"> • Cash prize of USD 250, • Letter of Appreciation from Prof. Gary B. Born, • 6-month subscription to Born's International Arbitration Lectures, and • An opportunity to be considered for publication in the next issue of IJAL.
Third Prize	<ul style="list-style-type: none"> • Cash prize of USD 125, • Letter of Appreciation from Mr. Gary B. Born, and • An opportunity to be considered for publication in the next issue of IJAL.