

## **UNINETTUNO's Cross-border Business Disputes Bootcamp**

*Navigating disputes between international businesses and combatting legal issues with organisational conduct*

**In association with Berlin School of Business and Innovation (BSBI)**

By

**Dott. Argha Kumar Jena, LL.M (Berlin), Advocate (India)**  
*Ph.D. Scholar (Int'l Economic Law) at UNINETTUNO, Rome, Italy*

### **Why attend the bootcamp?**

Most companies in the world irrespective of their size and industry have become global in several ways. At the brink of the digitalization, business operations across industries have attained an inherently international character – be it through stakeholders, investments, contractors, or employees. In an already globalized economy, the new normal has constrained companies to forge innovative processes to continue operations and adopt de-risking strategies to further internationalize their existing businesses.

With innovative business operations and increasingly internationalized relations – disputes amongst commercial parties have also changed planes. A commercial dispute being cross-border or international in nature, is no longer a sparing occurrence. While legal personnel specialized in international disputes are engaged in high value disputes – companies being represented by their in-house teams is becoming an increasingly common phenomenon. Regardless of representation, international commercial disputes are characteristically fact intensive – thus making imperative for the company's management and operations to follow procedures that allow tracing of document trails to ensure persuasive and reliable evidence while easing of demonstration of fact patterns.

Upon completion of this course, the future/existing professionals of business management would be equipped with the knowledge required to perceive international contractual relations from a disputes point of view – thereby developing skills necessary for business negotiations, crisis management and conflict resolution amongst others. Globalised business relations and its geo-economic impacts compels management professionals to be abreast with international dispute resolution mechanisms. This interactive bootcamp shall address such need.

### **Aims and Objectives**

This bootcamp aims at introducing future/existing professionals of business management to the prevalent framework of international law which governs disputes between parties to an international contract i.e., parties from different countries engaging into contractual relationship for sale of product and services. In order to avoid adjudication by courts of any particular country, the parties to international contracts almost always resort to alternate (international) dispute resolution (IDR) methods, especially arbitration.

The fact intensive nature of IDR methods requires a robust coordination between the company management and the legal personnel representing the company concerned. This series shall include modules and simulations that acclimatize the management professionals with the nuances of the legal framework underlining the IDR methods to ensure effective understanding of international dispute scenarios and help navigating the complex intertwining of national and international rules of law.

Upon achieving a better understanding of the legal frameworks governing IDR, the professionals can effectively forecast dispute scenarios during business negotiations, react promptly and efficiently

while engaging in crisis management and participate meaningfully in conflict resolution – thereby reducing the time and money spent in catering dispute scenarios.

In 5 modules, this series of lectures shall breakdown the essential concepts of IDR briefly for speedy understanding of the dynamics of the business relations at the time of contractual disputes between parties to international contracts. Following each module will be an exercise or group activity to help the students assess their understanding of the substance in each module.

### **Learning Outcomes**

Upon completion of the lecture-series along with all exercises and activities, the students will have achieved an intermediate understanding of the following:

- Dispute scenarios in International Commercial Contracts in general and specifically in the construction sector.
- Key elements of international dispute resolution (IDR) clauses to be considered while negotiation of international contracts.
- Digitalization of IDR methods.
- Key considerations of choosing IDR methods.
- Importance of streamlining subject matter operations of an international contract.
- Procedures involved in IDR methods.
- Possible outcomes of IDR methods.
- Cross-border enforceability of IDR outcomes.

### **Course Details**

Duration (5 hours)

- 4 hours teaching activity
- 1 hour of simulation exercise
- Certificate of completion given upon:
  - a. Submission of report/paper on self-chosen topic (1000 words); OR
  - b. Successful completion of simulation exercise

Delivery: **ONLINE**

### **Module Outline**

- I. Introduction: Introduction and Basic Concepts (1 hour)
  - a. **Introduction to Commercial Disputes (B2B context)**
  - b. **Dispute Resolution and Alternate Dispute Resolution System (ADR).**
  - c. **Types of Dispute Resolution Methods: Arbitration, Mediation Conciliation – founding principles, and brief history.**
  - d. **Contrasting International and Domestic Dispute Resolution Methods.**
  - e. **Key elements of International Arbitration.**
  - f. **Contrasting Ad hoc and Institutional Arbitration.**
  - g. **Why Arbitrate? How to Arbitrate? – Pros and Cons.**
  - h. **How is International Arbitration regulated? – Role of International conventions and the Model Law.**

- II. The Arbitration Agreement (30 mins)
  - a. Ex-ante and Ex-post Agreement to Arbitrate.
  - b. Doctrine of Separability.
  - c. International Standards of Agreement to Arbitrate.
  - d. Key elements of an Agreement to Arbitrate.
  - e. Multi-tier arbitration clauses.
  - f. Arbitrability.
  - g. Privacy and Confidentiality in International Arbitration.
  - h. Pathological Agreements to Arbitrate.
  - i. Waiver of Right to Arbitrate.
  - j. Multi-party Arbitrations.
  - k. Consolidation and Joinder.
  
- III. Procedure Involved (1 hour)
  - a. Principle of Party Autonomy and Limitations thereto.
  - b. Typical procedural structure of international arbitration.
  - c. Digitalization of procedures and Online Dispute Resolution
  - d. Expedited procedures.
  - e. Bifurcation.
  - f. Written Submissions.
  - g. Collection of Evidence and Discovery.
  - h. Expert Evidence.
  - i. Hearings (incl. Virtual Hearing guidelines).
  - j. Refusal to Participate.
  - k. Hot tubbing.
  - l. Proceedings post-hearing.
  
- IV. Arbitral Award (45 mins)
  - a. Definition and Form of Award.
  - b. Categories of Awards.
  - c. Remedies in Awards.
  - d. Deliberations and Decisions of the Tribunal.
  - e. Form and Content of Awards.
  - f. Effect of awards.
  - g. Correction, Interpretation and Clarification of Awards.
  - h. Review of Awards and Post-Award Settlement.
  - i. Publication of Awards.
  - j. Purpose and Pre-conditions of Challenge to an Arbitral Award.
  - k. Challenge of Awards.
  - l. Additional Awards and Remission of Awards.
  
- V. Recognition and Enforcement (45 mins)
  - a. Performance of Awards.
  - b. Differentiate between Recognition and Enforcement.
  - c. Enforcement by Court proceedings.

- d. General Principles of Recognition and Enforcement.**
- e. Enforcement under New York Convention.**
- f. Place of Recognition and Enforcement.**
- g. Methods of Recognition and Enforcement.**
- h. Grounds for refusal of recognition and enforcement.**
- i. Effects of Refusal of recognition and enforcement.**

**Lecturer Profile:**

Mr. Argha Kumar Jena is an attorney from India practising International Arbitration and Ph.D. scholar at UNINETTUNO, Rome composing his dissertation in the area FDI Screening Regulations and Sustainable Development Goals. He has an LL.M. in International Dispute Resolution from the Humboldt University of Berlin and is also serving as an Assistant Country Reporter (India) for the CELIS Institute (Berlin). As a practitioner in International Dispute Resolution, he has been associated with international law firms in Germany and India, while having advised and represented clients from Europe, Asia, and the Middle East periodically in international transactions and disputes. Additionally, he is associated as a senior researcher with legal experts from Germany and Sweden advising the European Commission and governments of European Union (EU) Member States in international investment disputes.