IIDRC
Institutional & Industrial Dispute Resolution Centre

JULY 2026 EDITION

PANORAMA

ADR IN CROSS-BORDER TRADE

Supply Agreements, Joint Ventures, Enforcement & Treaty Considerations

PRANAV MAGO

Chief Executive Officer
at **E.L.F. Partners**

EXCLUSIVE INTERVIEW

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SECTION ONE · WELCOME NOTE

CEO'S MESSAGE

01

E.M.I.S. Finance B.V. did nothing wrong. It lent money to a Ukrainian borrower, which is the entire job description of a lender. Then Ukraine nationalised the bank behind that borrower, and close to 470 million dollars in repayments stopped arriving. EMIS was never sanctioned. Neither were its shareholders. It was simply standing in the wrong place when the machinery moved.

That story runs through this issue in different jurisdictions and different clothes. We still describe a dispute as two parties and a contract. It is a tidy picture and increasingly a false one. Our lead article argues that the countermeasures defence, drafted for two states glaring at each other across a table, should not defeat a lender who was never at that table. The argument is narrow, technical and, I think, correct. Correspondent banking and payment infrastructure now run through so few jurisdictions that collateral casualties are a feature of the system rather than an accident of it.

Sundaresh Menon, Chief Justice of Singapore, puts the problem more bluntly elsewhere in these pages. The public resents decisions taken behind closed doors, through a process in which it is neither seen nor heard. There are now 1,463 treaty-based claims against 136 states, six in ten seeking more than a hundred million dollars. Those are public balance sheets. The room they are argued in is private.

Our joint venture piece takes the problem somewhere faster. When the asset was a warehouse, a court could take a week to list the matter and the warehouse would still be there on Friday. A shared repository will not wait. It can be copied, altered or wiped in the time it takes to boil coffee, from anywhere, by anyone with a login. SIAC's 2025 Rules give an emergency arbitrator twenty four hours to decide a protective preliminary order, and the ICC followed in June. That is not a procedural timeline. It is a reaction time, and it tells you what the institutions think they are up against.

Pranav Mago supplies the counterweight in this month's interview. If EMIS is a third party dragged into a dispute it never chose, litigation finance is a third party buying its way in on purpose. His line is worth sitting with: merit gets you through the door, but it does not necessarily get you funding. Legal merit, quantum and enforceability each have to withstand scrutiny independently. Unsentimental, and increasingly how the market reads a claim.

On our own month. The AAI Series webinar on 4 July examined ADR in cross-border trade, sponsored by S.P. Singh Chawla of Corplit. We served as Supporting Partner at the launch of the India Energy Law Association on 11 July, and again at BGLS on 15 July, where Neha Saifi moderated a panel. Our Open House drew a strong turnout. And we signed fifteen new collaborations, the same number as last month. My team has either found a rhythm or quietly set itself a quota.

Read the issue with one question in mind. In every dispute described here, count the parties who signed something. Then count the parties who will pay for it. Those two numbers stopped matching a while ago.

Hamid

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CEO, IIDRC

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INSTITUTIONAL COLLABORATION

During the month of July 2026, the Institutional and Industrial Dispute Resolution Centre (IIDRC) significantly strengthened its collaborative ecosystem through a series of strategic Memoranda of Understanding (MoUs) with leading institutions, law firms, corporates, and emerging technology organisations. These collaborations reflect IIDRC's continued commitment to fostering innovation, professional development, and institutional engagement in the field of dispute resolution.

Among the notable academic collaborations was the partnership with Graphics Era Deemed to be University, aimed at promoting research, capacity building, and awareness in arbitration, mediation, and allied legal disciplines. IIDRC also expanded its engagement with the legal fraternity through collaborations with BDN Chambers, Nexalex Advisory, Rishabh Gandhi and Advocates, Aadinit Legal, and VSN Legal Associate, creating avenues for knowledge exchange, internships, training programmes, and professional networking.

Expanding Partnerships, Strengthening the ADR Ecosystem

On the corporate front, IIDRC entered into collaborations with Arch Align Construction Company, SysGrowCare, Krishna & Son's Proprietorship Firm, PNG Design Consulting LLP, and Arbitalis AI. These partnerships are expected to facilitate dialogue on commercial dispute resolution, sector-specific ADR practices, and the integration of technology and artificial intelligence into dispute management systems.

Additionally, the collaboration with Nyayavani Foundation highlights IIDRC's commitment to social outreach and legal awareness initiatives.

Collectively, these July 2026 collaborations demonstrate IIDRC's multidisciplinary approach and its growing role as a bridge between academia, industry, technology, and the legal community in advancing effective and future-ready dispute resolution mechanisms

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INSTITUTIONAL COLLABORATION

BDN Chambers

SysGrowCare

Arch Align Construction Company

AKG Law Chambers

Rishab Gandhi and Advocates

MSA Legal

Nexalex Advisory

PNG Design Consulting LLP

Graphisc Era Deemed to be University

Nayayavani Foundation

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WEBINAR ON ADR IN CROSS-BORDER TRADE

Webinar Overview

The webinar on "ADR in Cross-Border Trade" was conducted on 4th July 2026 as part of the AAI Series – ADR Across Industries, the flagship monthly webinar initiative organised by IIDRC. The session brought together leading practitioners and experts to discuss the evolving role of Alternative Dispute Resolution in managing disputes arising from international commercial transactions.

Expert Perspectives Shared

The session commenced with a note of sincere appreciation for Mr. S.P. Singh Chawla, Founder, Corplit, whose generous support in sponsoring the webinar made this engaging and insightful discussion possible. His continued contribution towards promoting ADR and supporting knowledge-driven initiatives was gratefully acknowledged.

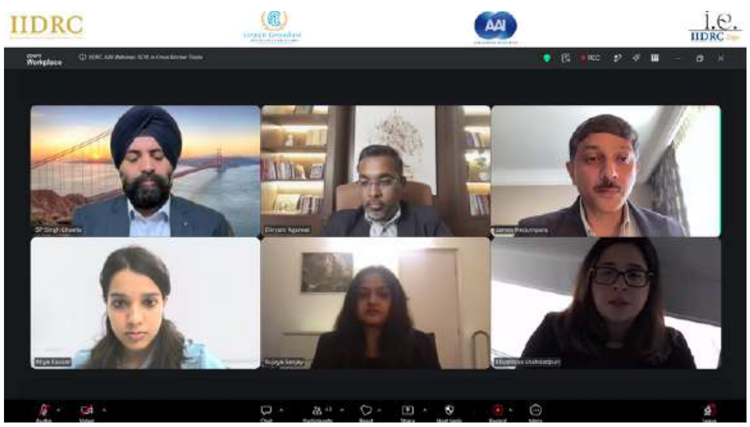
The discussion was adeptly moderated by Ms. Sujaya Sanjay, Associate at CTIL, who set the context by highlighting the increasing complexity of cross-border trade and the corresponding need for efficient and neutral dispute resolution mechanisms. Her moderation ensured a structured and engaging exchange of ideas throughout the session.

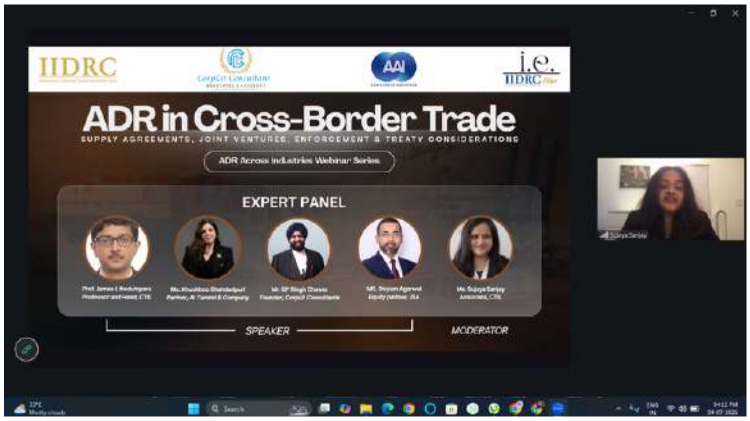
Professor James Nedumpara, Head of CTIL, opened the discussion by laying down the legal and institutional framework governing cross-border trade disputes. He emphasised the importance of international arbitration as a preferred mechanism due to its neutrality and enforceability across jurisdictions.

Mr. S.P. Singh Chawla brought in practical and industry-driven perspectives, focusing on the commercial realities of cross-border transactions. He highlighted the importance of carefully drafted dispute resolution clauses and discussed how businesses can proactively integrate ADR mechanisms to minimise risks and ensure efficiency in dispute resolution.

Ms. Khushboo Shahadpuri, Partner at Al Tamimi & Company, UAE, addressed the complexities surrounding enforcement of foreign arbitral awards and jurisdictional challenges. She provided valuable insights into procedural nuances and comparative perspectives, particularly in the context of cross-border enforcement frameworks.

Mr. Divyam Agarwal, Partner at JSA Advocates & Solicitors, Delhi, contributed a contemporary outlook by discussing the role of technology and Online Dispute Resolution (ODR) in cross-border trade. He emphasised how digital platforms are increasingly shaping the future of dispute resolution by making processes more accessible, efficient, and cost-effective.





Concluding Reflections

The interactive discussion allowed participants to gain nuanced insights into real-world challenges and solutions in cross-border dispute resolution.

The webinar concluded with an engaging exchange of ideas, reinforcing the critical role of ADR in facilitating smooth and efficient resolution of disputes in an increasingly interconnected global trade environment, and underscoring the importance of continued dialogue through platforms such as the AAI Series

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IELA EVENT - IIDRC AS SUPPORTING PARTNER

11 JULY 2026

The Institutional & Industrial Dispute Resolution Centre (IIDRC) was honoured to serve as the Supporting Partner for the Launch and Inaugural Conference of the India Energy Law Association (IELA), held on 11th July 2026. The event marked a significant milestone in the evolution of India's energy law landscape, bringing together leading legal practitioners, industry experts, policymakers, and corporate leaders to deliberate on the legal and commercial dimensions of the country's rapidly evolving energy sector.

IIDRC extends its heartfelt congratulations to Ms. Sudha Reddy, Founder of IELA, for successfully launching the Association and hosting a landmark inaugural conference.

The conference was graced by **Hon'ble Justice Tejas Karia, Judge,** High Court of Delhi, as the Chief Guest, whose presence underscored the growing significance of legal frameworks in facilitating the nation's energy transition.

The highlight of the event was an engaging panel discussion on the theme, "From Fossil Fuels to Renewables: Navigating the Industrial and Legal Dimensions of the Energy Transition." The discussion brought together distinguished experts, including **Dr. Sanjeev Gemawat**, Managing Director & Group General Counsel, Essar Group; **Vishrov Mukerjee**, Partner at Trilegal; **Naveen Khandelwal**, Chief Executive Officer, India Yanara; and **Pratiksha Kulshrestha**, Chief Legal Manager, Directorate General of Hydrocarbons. The session was expertly moderated by Senior Advocate **Buddy Ranganadhan**, facilitating insightful discussions on regulatory developments, investment opportunities, sustainability, dispute resolution, and the legal complexities accompanying India's shift towards renewable energy.

Her vision has laid the foundation for a dynamic platform dedicated to fostering collaboration, encouraging knowledge exchange, and advancing thought leadership in the field of energy law.

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BGLS - IIDRC AS SUPPORTING PARTNER

15 JULY 2026

IIDRC was proud to participate as a Supporting Partner at the BGLS event held on 15th July 2026, which brought together a dynamic gathering of legal professionals and industry experts. The event served as an excellent platform for meaningful engagement, knowledge exchange, and fostering valuable professional relationships.

A key highlight of the event was the presence of esteemed personalities, including Mr. Rishabh Gandhi, former Judge, whose participation added significant value to the discussions. Another notable moment was Ms. Neha Saifi from IIDRC moderating one of the panels, contributing effectively to the depth and direction of the dialogue.

The event featured multiple panel discussions with distinguished professionals from diverse sectors, making it a highly engaging and insightful experience. IIDRC leveraged this opportunity to connect with industry leaders and stakeholders, leading to promising collaborations and recent associations, including the signing of Memorandums of Understanding (MoUs).

With strong participation and enriching discussions, the event successfully created a collaborative environment for sharing perspectives on evolving legal and dispute resolution practices. IIDRC looks forward to building on these connections and continuing its engagement with the broader professional community.

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IIDRC OPEN HOUSE

The IIDRC Open House stood out as a highly successful in-house event, witnessing an impressive turnout with a large number of participants showing up with enthusiasm, curiosity, and a keen interest in engaging with the institution’s work.
The session brought together a distinguished group of speakers, including Niti and Adarsh, Partner at Aadinit Legal, Radhika, Founder of Mediation Mantra, Harsh Tyagi from The Counsel Chamber, and Satyajit Gupta, Vice President at EXL. Their diverse expertise added depth and perspective to the discussions, making the session both insightful and impactful.

The Open House was marked by a spirit of active participation, with attendees engaging in meaningful conversations, sharing experiences, and gaining practical exposure to real-world legal and ADR practices. The interactive format encouraged open dialogue, allowing participants to learn not only from the speakers but also from each other.
This vibrant exchange of ideas fostered valuable connections and strengthened IIDRC’s growing professional network. The event successfully reflected IIDRC’s commitment to creating collaborative platforms that promote learning, dialogue, and innovation within the dispute resolution ecosystem.

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SECTION THREE · ARTICLES

03

Arbitration Without Accountability: The Quiet Crisis in Investor-State Dispute Settlement

This article has been authored by:

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LLM Candidate

"States complain of what they perceive to be an unjustified encroachment into their regulatory space. Investors bemoan the fragmentation of investment law. And the public resents the fact that an anonymous panel of lawyers sitting behind closed doors are making decisions with significant implications for their well-being and livelihoods through a process in which they are neither seen nor heard."
— Sundaresh Menon, Chief Justice of Singapore

ABSTRACT.
Investor-State Dispute Settlement (ISDS) occupies an inherently contested position within international investment law. Conceived as a neutral mechanism for resolving disputes between foreign capital and sovereign authority in the domain of cross-border trade, the system now confronts a structural dissonance: its procedural form is private, yet the disputes it adjudicates are inescapably public. This article interrogates the three systemic failures that underpin the legitimacy crisis in ISDS, examines India's unilateral BIT recalibration following White Industries v. India as a sovereign corrective to those failures, and situates both within the multilateral reform agenda of UNCITRAL Working Group III in 2026. It concludes with a tripartite reform architecture and a challenge to the discipline.
Keywords: Investor-State Dispute Settlement; Bilateral Investment Treaties; UNCITRAL Working Group III; regulatory chill; India Model BIT 2016; arbitral legitimacy; cross-border trade; investment arbitration reform.

I. INTRODUCTION

Can a sovereign State, having enacted legislation in the public interest, be summoned before a private tribunal at the suit of a foreign corporation and ordered to pay damages measured in the hundreds of millions of dollars? For more than fourteen hundred known proceedings, the answer has been yes. By the close of 2025, 1,463 treaty-based ISDS claims had been filed against 136 States, with 56 fresh arbitrations initiated in that year alone. Approximately sixty per cent of those claims involved damages demands exceeding USD 100 million; in 143 proceedings, investors sought more than one billion dollars. These are not abstract figures. They represent the quantified cost of a system that adjudicates sovereign governance through private procedure, with public money on the line and the public excluded from the room. The central analytical challenge of contemporary investment law is to understand how a mechanism designed to underpin cross-border trade has produced this structural paradox, and to determine whether it can be reconstituted on a legitimate foundation.

II. THE STRUCTURAL DISSONANCE OF ISDS: THREE SYSTEMIC FAILURES

The foundational justification for ISDS is coherent: foreign capital flowing into markets where domestic courts are insufficiently independent, unduly slow, or structurally biased against foreign litigants requires access to neutral adjudication that transcends the host State's own legal apparatus. That premise retains its validity. What the system's architects did not anticipate was that ISDS would evolve into a forum adjudicating issues of profound constitutional character, including the scope of sovereign regulatory authority, the threshold of permissible expropriation, and the compensatory consequences of public-health and environmental legislation.

Three systemic failures have crystallised from this evolution. First, the inconsistency of arbitral decision-making. Ad hoc tribunals, constituted without a doctrine of precedent, have construed the same treaty standards, most critically fair and equitable treatment (FET) and indirect expropriation, in irreconcilable ways. States ratify BITs unable to determine what obligations they actually assume. That unpredictability is not a peripheral inconvenience; it is a structural defect that makes calibrated regulatory governance impossible.

Second, the architectural opacity of proceedings. ISDS is a private process: hearings are closed, awards are frequently confidential, and third parties whose interests are materially affected, including affected communities and the public whose tax revenues fund adverse awards, are systematically excluded. This opacity is constitutively incompatible with the transparency and accountability that rule-of-law institutions are expected to uphold.

Third, the suppression of host-State regulatory autonomy through what scholarship terms ‘regulatory chill.’ The mechanism operates through economic attrition rather than legal prohibition. In Philip Morris v. Uruguay, a tobacco corporation challenged Uruguay's plain-packaging legislation as expropriatory. The tribunal ultimately sustained Uruguay's regulatory authority. But the proceedings consumed seven years and generated legal costs that would have been prohibitive for any State of comparable fiscal capacity. The chilling effect is located precisely here: the threat of ISDS proceedings deters governments from enacting bona fide public-interest measures not because those measures are legally impermissible, but because defending them is financially unsustainable.

III. THE INDIAN RESPONSE: SOVEREIGN CORRECTIVE THROUGH TREATY RECALIBRATION

India's experience illustrates, with particular acuity, the operational costs of a first-generation BIT regime drafted to maximise investor protection without commensurate attention to sovereign regulatory space. The catalytic event was White Industries Australia Ltd v. Republic of India. An Australian investor, whose contractual claims against a State entity had been pending in Indian courts for over nine years, invoked the most-favoured-nation clause of the India-Australia BIT to import a more advantageous dispute-resolution provision from the India-Kuwait BIT. The tribunal awarded damages and found India in breach of its obligation to provide ‘effective means’ of asserting claims, by reason of judicial delay internal to India's domestic courts. The implication was structurally significant: a sovereign State had incurred international treaty liability for the ordinary, if protracted, functioning of its own judicial system.

The award catalysed a cascade. Claims targeting retrospective tax legislation, spectrum licence cancellations, and energy-sector regulatory changes followed in rapid succession. By 2016, India had become one of the most frequently named ISDS respondents. India's response was not to exit the system, but to reconstitute its engagement with it. It terminated 76 of its 83 existing BITs and promulgated the 2016 Model Text as the template for renegotiation.

Three architectural shifts define the Model BIT. First, mandatory exhaustion of local remedies for a minimum of five years before international arbitration may be commenced, directly addressing the White Industries vulnerability by confining ISDS to its proper function as a remedy of last resort. Second, the elimination of the open-ended FET standard, juxtaposed with an exhaustive closed list of specific due-process guarantees anchored to internationally recognised concepts of denial of justice, thereby foreclosing the expansive jurisprudential space through which tribunals had previously extended investor rights beyond what States had consciously bargained for. Third, a restrictive definition of protected ‘investment’ that excludes purely speculative or portfolio holdings, confining treaty protection to capital underpinned by genuine productive engagement in the host economy.

These reforms have attracted criticism for their restrictiveness: India has concluded only four new BITs since 2016, leaving substantial intervals of treaty protection vacuum for investors operating in the Indian market. That tension between regulatory autonomy and credible investor protection is precisely what a reformed multilateral framework must resolve. India's Model BIT is best understood as a sovereign corrective: a unilateral attempt, through treaty practice, to address systemic failures that international institutions had not yet collectively remedied.

IV. THE MULTILATERAL RESPONSE: UNCITRAL WORKING GROUP III IN 2026

Where India sought correction through national treaty practice, UNCITRAL Working Group III has pursued it through multilateral institutional design. Its 53rd and 54th sessions in early 2026 advanced a Reform Package addressing both procedural and structural dimensions of the ISDS crisis. At the procedural level, two significant agreements were reached: a broad-scope right of State counterclaims, enabling host States to raise investor breaches of domestic environmental, labour, or human-rights obligations within the same proceeding; and mandatory disclosure of third-party funding arrangements, targeting the structural conflicts of interest that undisclosed commercial funders introduce.

At the structural level, Working Group III continues to develop a standing multilateral investment tribunal to replace the ad hoc model. A permanent bench would generate the doctrinal coherence and inter-award consistency that ad hoc constitution is constitutively incapable of producing. Combined with an appellate mechanism, it would address the independence and predictability deficits simultaneously. The Canada-EU CETA and the CPTPP provide working bilateral precedents for both the investment-court model and institutionalised pre-arbitration mediation, respectively, demonstrating that the reform architecture being proposed at UNCITRAL is not merely theoretical but has already been operationalised by treaty partners with sophisticated investment regimes.

V. CONCLUSION: THE ARCHITECTURE OF A LEGITIMATE FUTURE

The legitimate grievance against ISDS is not that it protects investors; it is that it protects them through a procedural form that is structurally incapable of satisfying the rule-of-law criteria that adjudicative institutions exercising public power must meet. Three reforms address this directly. Treaty diligence must become substantive, not assumed: in an era in which India alone has terminated 76 BITs, protection must be verified treaty by treaty, clause by clause. UNCITRAL's Reform Package, particularly the standing tribunal and counterclaim provisions, merits active institutional support from all stakeholders, because a system that commands no constituency's confidence protects no one effectively. And mediation must be elevated from afterthought to structured first step, institutionalising the conditions for early resolution in disputes that are, at their core, negotiable.

The foundational premise of ISDS, that cross-border capital requires legal certainty beyond what domestic institutions reliably supply, retains its validity. What it does not retain is the procedural form through which that certainty has historically been delivered. India's Model BIT and UNCITRAL's Reform Package are not opposed projects; they are convergent expressions of the same structural imperative: that investor protection and sovereign governance can coexist, but only within an institutional framework that is transparent, consistent, and accountable. The question that remains for the discipline of international investment law is whether the collective will to build that framework will outlast the accumulating political costs of failing to do so. At that inflection point, what kind of investment order are we prepared to design?

SECTION THREE · ARTICLES 03

Data Deadlocks: Emergency Interim Relief for IP Protection in Failing Cross-Border Joint Ventures

This article has been authored by:

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Ports are no longer an exclusive means of conducting international trade. For months, a container ship transporting machine components may be securely stored in a bonded facility without losing any of its value. A shared codebase cannot. Today's cross-border joint ventures are more likely to be based on a jointly developed AI model, a proprietary algorithm, or a customer data lake than they are on any physical asset, and this change has subtly surpassed the dispute resolution mechanisms that the majority of contracts still rely on. Imagine a partnership between a US-based supply-chain software business and an Indian logistics technology company. Pricing algorithms, a client database, and a data pipeline that both parties input into and drew from on a regular basis formed the foundation of the collaboration. The partnership then deteriorates due to a disagreement over value, a shift in strategy, a falling out between the founders, and within days, the engineers of one partner start to doubt that the other will act fairly.

Quietly, admin credentials are rotated. At strange hours, a senior developer begins pushing commits. One person suggests "just downloading everything before the lawyers get involved." Neither a forklift nor a warehouse key is needed for any of these. A laptop and a login are needed.

Despite all its benefits, traditional court litigation is designed for a world with slower damage. This is the impasse situation that keeps internal counsel up at night. It was never intended to prevent a repository from being changed before breakfast. This essay makes the case that the greatest practical defense for shared data and intellectual property in the event of a cross-border joint venture seizure is fast-track emergency arbitration rather than a race to the closest courtroom.

I. WHY DIGITAL ASSETS BREAK THE OLD PLAYBOOK

A basic, almost tactile premise underpinned the development of the law of temporary relief: assets sit in someplace. At the event that a partnership fails and equipment or inventory is at risk; the equipment remains at a warehouse until it is instructed to relocate. Courts had time. Before the work was finished, a hearing set for the next week may still take place. Data and intellectual property don't act that way. In the time it takes to boil coffee, a shared GitHub repository, a customer database, or a set of trained model weights may be completely duplicated, drastically changed, or permanently erased from a single terminal, anywhere in the world. The intent to harm and the actual injury occur simultaneously. When a dissatisfied partner wipes up a shared server or exfiltrates a trade secret, the loss is frequently irrevocable. No subsequent ruling, no matter how accurate, can restore a wiped dataset without a functional backup or a trade secret that has already been exposed to a rival.

Unfortunately, cross-border joint ventures exacerbate the systemic slowness of domestic courts in responding to this sort of urgency. Let's say our hypothetical Indian and American partners are at a standstill. Which court advances first, and at what speed? Before it even reaches the merits, a US federal court sought to enjoin behavior occurring partially on foreign servers will demand a briefing on personal jurisdiction; an Indian court hearing may take weeks to list on an urgent basis. In the meanwhile, court

documents are usually available to the public. In the process of outlining what is at risk, a party requesting a court to prevent a trade secret leak may reveal the exact private information it is attempting to safeguard rivals, the media, or the market. That is more than just a small annoyance for a collaborative venture based on secret algorithms; it might negate the whole point of seeking relief.

II. THE EMERGENCY ARBITRATOR: BUILT FOR THE SPEED DATA REQUIRES

Significant international arbitral organizations anticipated this gap years before, and a wave of amendments in 2025 and 2026 has further sharpened the emergency arbitrator process. A party in a crisis may request the appointment of an emergency arbitrator (EA), a temporary sole decision maker with the authority to grant binding interim relief before a full tribunal is even constituted, in accordance with regulations from the Singapore International Arbitration Center, the International Chamber of Commerce, and the London Court of International Arbitration. In accordance with the ICC's regulations, the Secretariat seeks to designate an EA within two days of receiving an application, with an order to follow in around two weeks. SIAC has historically operated even more quickly, designating an EA on a single calendar day and demanding a judgment within fourteen days of the appointment. What these arbitrators can now do before the opposing party even knows an application has been submitted, however, is the more important development.

With effect from January 1, 2025, SIAC's 2025 Rules established the "protective preliminary order," an emergency measure that can be granted genuinely without notice to prevent a party from destroying evidence or impeding the relief sought. The emergency arbitrator must decide within twenty-four hours of being appointed. To prevent the kind of overnight data-wipe scenario mentioned above, the ICC followed suit with its 2026 Rules, which went into effect on June 1, 2026. Article 7 of Appendix IV now permits a party to request a preliminary order preventing the other side from frustrating an emergency application, decided without prior notice. These modifications are not aesthetic. To prevent a partner with rotating admin privileges from causing the greatest harm, they limit the precise window of time between filing and notice. The ensuing menu of relief appears quite useful in a tech-heavy joint venture impasse. A shared code repository may be frozen by an emergency arbitrator, preventing commit access until the underlying disagreement is settled. To prevent either side from unilaterally locking the other out or erasing shared environments, they can direct the temporary suspension or joint control of administrative credentials to cloud infrastructure such as AWS and Azure.

They can order forensic preservation of servers and devices before logs are deleted, and they can impose legally binding non-disclosure and non-use orders covering trade secrets and client data. Crucially, arbitration's confidentiality as a default feature of institutional rules reinforced under SIAC's 2025 Rules means a party may seek all of this without revealing the very secrets it is attempting to protect. In Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., India's Supreme Court determined that under Section 17 of the Arbitration and Conciliation Act, 1996, an emergency arbitrator's award in an India-seated arbitration qualifies as an interim order of the "arbitral tribunal" and is directly enforceable by Indian courts in the same manner as a court order with no separate appeal available against the enforcement order itself. Though the case did not include source code, its logic carries far: Once parties have accepted institutional arbitration standards including emergency relief, they cannot subsequently assert the order produced lacks teeth. A properly drafted, India-seated arbitration clause referencing SIAC or similar regulations would place a party wishing to protect its data directly within the scope of a body of legislation that already, unusually, has direct precedent acknowledging enforceability for an India-US joint venture of the kind mentioned above.

THE WAY FORWARD

None of this should be used in place of thorough contract drafting. Arbitral institutions are clearly racing to narrow this gap, as seen by the last eighteen months of rule modifications. As global business becomes increasingly digital, the instruments used to adjudicate disputes over that trade must move at a digital speed. However, an emergency arbitrator can only be called upon if the underlying joint venture agreement calls for one, identifies an organization whose regulations permit it, and does not unintentionally preclude it. In the future, cross-border joint venture agreements involving shared technology or data should naturally include emergency arbitration clauses, specify a seat and institutional rules selected with enforceability in mind, and pair those clauses with useful safeguards like source code escrow, logged and auditable admin access, and explicit IP ownership provisions so that, in the event of a deadlock, the emergency arbitrator has something tangible to protect and a quick, private forum in which to do so. Every joint venture must eventually prepare for the commercial risk of corporate impasse. Partners can no longer afford to assume that their joint intellectual property would be destroyed until the courts catch up.

SECTION THREE · ARTICLES

03

Third-Country Investors and the Countermeasures Defence: A Ratione Personae Gap in Sanctions-Era ISDS

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Every reported sanctions dispute against Ukraine to date has involved a sanctioned investor suing the sanctioning state. ABH Holdings S.A.'s claim fits that pattern precisely: its controlling shareholders were themselves designated on Ukraine's sanctions list before Ukraine nationalised Sense Bank. A second claim, filed over the same underlying facts, does not fit the pattern at all. E.M.I.S. Finance B.V., a Dutch lender with no shareholding link to any sanctioned person, lost close to $470 million in loan repayments when the nationalisation left its Ukrainian borrower unable to pay. EMIS was never sanctioned by anyone. Its claim, registered by ICSID in March 2025, tests an assumption the sanctioned-investor cases never had reason to examine: whether a countermeasures defence built for a two-party relationship can be raised against a claimant who was never a party to it.

THE BILATERAL PREMISE OF ARTICLE 22

Countermeasures, as codified in Articles 22 and 49 through 54 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, were drafted for a relationship between an injured state and the state responsible for the wrongful act. The Commission's commentary treats countermeasures as inter-state instruments, not opposable to third states, and Crawford's account of the drafting confirms that the Commission worked from a state-to-state template at every stage. That template says nothing about a private claimant with no nationality link to either side of the dispute, harmed only because correspondent banks and payment networks cannot separate a sanctioned shareholder's default from a third-country lender's loss. Investment tribunals inherited a defence built for that bilateral template. None has yet been asked whether it survives a claimant standing outside it.

THE EMIS FACTS

EMIS is instructive because its claim sits so close to one that raises no third-country question at all. ABHH's claim arises from Ukraine's 2023 expropriation of Sense Bank, taken after ABHH's controlling shareholders, including Mikhail Fridman and Petr Aven, were placed on Ukraine's sanctions list, with ABHH itself also designated. ABHH filed its claim on 29 December 2023 under the Belgium-Luxembourg Economic Union-Ukraine BIT, registered as ICSID Case No. ARB/24/1. EMIS financed ABH Ukraine Ltd through a $470 million facility and had been receiving payments serviced from Alfa Bank Ukraine's profits before the nationalisation cut that income off. EMIS holds no equity in the sanctioned group. No shareholder of EMIS appears on any sanctions list, and its only connection to the conduct that triggered Ukraine's measures is an ordinary commercial loan.

Its claim, registered by ICSID on 10 March 2025 as Case No. ARB/25/10, alleges breach of the Netherlands-Ukraine BIT's expropriation, fair and equitable treatment, and free transfer provisions, filed under a treaty separate from ABHH's.

If Ukraine raises Article 22 against EMIS on the same terms it would raise against ABHH, the tribunal has to decide whether a defence premised on the wrongfulness of Ukraine's response to designated persons can be opposed to a lender who was never designated at all. No award in any comparable dispute has addressed that question. The closest available scholarship on unilateral sanctions and investment arbitration predates the Russia-Ukraine sanctions regime by nearly a decade and does not consider a third-country lender's standing against the countermeasures defence. A 2025 industry survey of the Alfa Bank litigation confirms that ABHH and EMIS proceed under separate treaties and separate case numbers despite arising from the same nationalisation, and situates both within a broader pattern of ISDS claims triggered by shifting sanctions classifications. That pattern is not confined to Ukraine. Four Russian nationals whose assets were frozen by Euroclear in Belgium, despite not being individually sanctioned, threatened Belgium with treaty claims in September 2025, illustrating the same collateral exposure outside any bilateral sanctions relationship. Investment tribunals have confined Article 22 once already, though on different reasoning than the one this article proposes. In Corn Products International, Inc. v. United Mexican States, Mexico raised a tax on high-fructose corn syrup as a countermeasure against the United States and argued that the tax's discriminatory effect on Corn Products' investment was therefore excused.

The tribunal held that NAFTA Chapter Eleven gave investors rights separate and distinct from the rights of their state of nationality, so a countermeasure lawfully directed against the United States could not excuse Mexico's breach of Corn Products' own treaty rights. Cargill, Incorporated v. United Mexican States, decided on the same underlying facts a year later, reached the identical result. Neither tribunal reasoned from Article 22's third-state language directly. Both reasoned from the structure of NAFTA: because the investor held rights independent of its home state, a countermeasure valid against the home state had nothing left to excuse as against the investor.

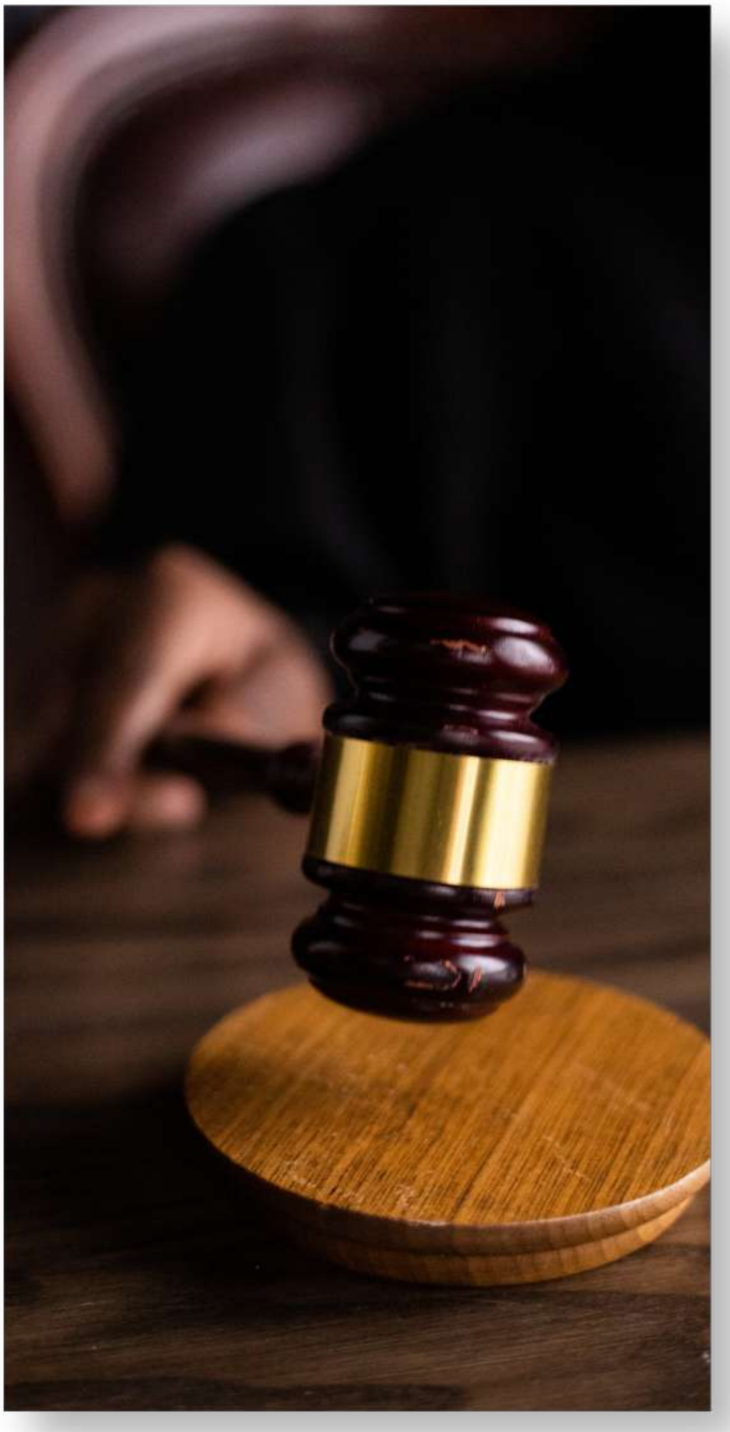
That reasoning does not transfer cleanly to EMIS. Sthoeger and Tams have argued that the better account of countermeasures as a shield does not turn on whether investor rights are separate from state rights, but on the scope of the rights the treaty parties themselves created, which would in principle leave room for a countermeasures defence to bind an investor whose home state had breached an obligation owed to the respondent. EMIS supplies no such trigger under either account. Ukraine's grievance runs against Russia, not against the Netherlands, and EMIS holds its rights under a treaty to which Russia is not a party. Whether a tribunal asks about the separateness of investor rights, as Corn Products did, or about the scope of the rights the treaty parties created, as Sthoeger and Tams propose, EMIS falls outside Article 22 either way, because nothing in the Netherlands-Ukraine relationship gives Ukraine a wrongful act to answer.

A RATIONE PERSONAE LIMIT

A defence conditioned on a bilateral relationship should not extend, without further justification, to defeat a claim brought by an investor outside that relationship. Countermeasures are not opposable to third states under general international law. There is no principled reason to treat a third state's national differently because that national proceeds through investor-state arbitration instead of diplomatic protection. EMIS's claim arises from a treaty between the Netherlands and Ukraine, negotiated independently of Ukraine's sanctions relationship with Russia or with ABHH's shareholders. Article 22 was never framed to reach that relationship, and a tribunal should not assume it does simply because both disputes trace back to the same nationalisation. The better rule confines the defence ratione personae to claimants who share the nationality link, or an equivalent connection to the underlying wrongful conduct, that the countermeasures regime was built to govern. Ukraine's answer to ABHH may draw on Article 22 without difficulty. Its answer to EMIS cannot, absent a showing that EMIS itself bears some connection to the conduct Ukraine's measures targeted, and no such connection exists on the facts as pleaded.

CONCLUSION

The sanctions-ISDS docket has settled around a single fact pattern for long enough that tribunals have not had to test its limits. EMIS breaks that pattern. As correspondent banking and payment infrastructure concentrate in a small number of jurisdictions, collateral harm to lenders, minority investors, and counterparties with no sanctions link of their own will become more common rather than less. Tribunals need a ratione personae limit on Article 22 before that happens at scale, not after the first award gets the answer wrong.



SECTION THREE · ARTICLES

03

Confidentiality at Risk: Generative AI and the Arbitration of Cross-Border Joint Venture and Shareholder Disputes

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INTRODUCTION

Confidentiality is as crucial in commercial arbitration as in the conflict between the parties to a cross-border joint venture ("JV") and its shareholders. The typical arbitration record includes cap tables, valuation models, board minutes, and the venture's proprietary technology at its core, and often a JV partner is also a competitor, family member, or long-term commercial counterparty. There is a new and largely unregulated avenue for this material to come out of the arbitration's confidentiality perimeter, which is the use of generative artificial intelligence ("AI") processes for drafting pleadings, model buy-out valuations, and for translation of board documents from multiple jurisdictions. This article suggests that the confidentiality provisions within shareholder and JV arbitration were intended to provide confidentiality for a closed circle of known parties, rather than for AI-enabled practice that involves the transmission of confidential corporate information through third-party systems. Arbitral institutions need to establish AI-specific confidentiality and disclosure rules that reflect the specific nature of JV and shareholder disputes; otherwise they risk undermining the very element that makes arbitration the preferred forum for these disputes.

CONFIDENTIALITY IN CROSS-BORDER JV AND SHAREHOLDER ARBITRATION

Confidentiality is not the rule of international law but is a mosaic of institutional rules and party agreement. In the case of shareholder and JV disputes, this protection has significant commercial impact: if a shareholders' agreement dispute comes out in the open, it can bring up issues of governance, valuation, or technology that is protected by trade secret status, and all to the very competitor across the table, who is also the co-venturer. Confidentiality, arbitrability and corporate governance are closely intertwined in this category of disputes, as seen in recent JV litigation and arbitration cases, such as Anupam Mittal v Westbridge Ventures II Investment Holdings (arbitrability of oppression claim in shareholders' agreement) and Crystal-Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd (a multi-party JV dispute). The standards of confidentiality that parties and tribunals must have towards one another as a baseline vary between the LCIA and SIAC Rules: the LCIA Rules include it in the confidentiality obligation of the parties, whereas the ICC Rules introduce a confidentiality obligation of the arbitrators, although party-level confidentiality remains subject to agreement or the order of the arbitrator. All of these frameworks were not written with AI-enabled data flows in mind.

AI-SPECIFIC RISKS IN JV AND SHAREHOLDER DISPUTES

In this context, there are three risks that are acute. First, the use of AI tools to prepare or review discounted-cash-flow and buy-out valuation models, the very material that could be released prematurely to a co-venturer-competitor and have a material impact on a "live" valuation negotiation or a parallel valuation dispute. When proprietary financial data is provided to a consumer-facing large language model ("LLM") there is a risk that this data will be retained for use in training the model or for some other unknown purpose, none of which will be under the control of the arbitration. Second, trade-secret and technology-transfer exposure: Exposure to technology (or IP) is a typical aspect of JVs, and an issue of misuse or unauthorised modification can often be a cause for arbitration. When counsel summarizes or translates technical specifications that are part of the dispute using AI, the same exposure happens again. Third, the verification issue: In Mata v. Avianca, Inc., judges were sanctioned for the false citations they submitted that were created by ChatGPT. A shareholder dispute already focused on the accuracy of and the "secrecy" of the valuation evidence submitted is exacerbated by the fact that the AI-generated submission is not verified. These will often involve multiple parties and jurisdictions, making it difficult to attribute leakage to a single party that has breached.

THE REGULATORY GAP

Soft law currently does not provide specific guidelines on the use of AI in arbitration. In the Guidelines on the Use of Artificial Intelligence in Arbitration (April 2024), SVAMC advises participants not to disclose confidential information to AI tools without proper vetting and authorisation and to consider disclosure of the use of AI a case-by-case, discretionary issue.

CIArb's Guideline on the Use of AI in Arbitration (March 2025, updated in September 2025) calls for “reasonable enquiries” to be made about the proposed use of a tool and offers a template procedural order along with a model agreement on the use of AI. There are similar short notes issued by the SCC and VIAC. None of these instruments clearly distinguishes between the JV and shareholder disputes, and none is adopted as part of the ICC, LCIA, SIAC or HKIAC Rules automatically. Model shareholders' agreements and JV arbitration clauses, which are often drafted years ahead of any dispute, also fail to mention the word AI, and tribunals will have to devise protections as they go, frequently after information has been processed by a third-party tool.

TOWARDS A TAILORED AI CONFIDENTIALITY FRAMEWORK

Three specific reforms could address this. First, institutional model clauses in shareholders' agreements and JV contracts should contain an opt-in AI confidentiality protocol at the outset, before there is any dispute, which presumes that valuation models, cap tables, and technical IP material can't be shared with third-party AI tools without vetted enterprise-grade data-handling terms. Second, tribunals hearing a JV and shareholder dispute should have the ability to tailor a procedural order, based on a conflict over valuation or trade-secret evidence, at the very first case-management conference, after the SCC AI Guide's focus on confidentiality and tribunal supervision, to address issues specifically related to the use of AI. Third, due to the multi-party, multi-jurisdictional nature of most cross-border JVs, institutions should refine their respective minimum standard of confidentiality for AI proceedings on the ICC, LCIA, SIAC and HKIAC Rules, following the template procedural order developed by CIArb, to ensure that co-venturers are protected equally if they are involved in proceedings where they are subject to different Rules.

CONCLUSION

Valuations, cap tables, and technology are uniquely sensitive areas where parties involved in a joint venture and shareholder disputes may be competitors. But this material can now be taken out of the confidentiality "bubble" of the arbitration in an efficient, but unregulated, way by means of Generative AI. While the current soft-law rules are a good starting point, only the institutional rules, drafted in advance of a dispute, not as an afterthought, can ensure that JV and shareholder arbitration is preserved.

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Bridging Disputes and Funding: A Conversation on Litigation Funding, Arbitration, and Global Practice with Pranav Mago

As part of this edition, we are pleased to feature an exclusive conversation with Mr. Pranav Mago, CEO and Founder of ELF Partners Pte. Ltd., a leading expert in litigation funding and international dispute resolution. With an accomplished career spanning institutional arbitration, global law firm practice, and strategic advisory, Mr. Mago has played a pivotal role in advancing awareness and adoption of international arbitration across South Asia. In this interview, he shares his insights on the evolving landscape of litigation funding, the growing significance of institutional arbitration, emerging trends in cross-border disputes, and the future of Alternative Dispute Resolution.

Q You have had a unique journey across international arbitration practice, institutional roles, and now litigation finance. What initially drew you to the field of dispute resolution?

A Honestly, dispute resolution wasn't exactly part of the plan, it just kept making a compelling case for itself. So, in hindsight, I would say it chose me.

I started out doing fairly conventional cross-border arbitrations at a UK Magic Circle firm, the kind of matters where three jurisdictions, four time zones, and at least one very unhappy general counsel are involved.

What struck me early on was that a "dispute" is rarely just a legal disagreement, it's a narrative about capital, timing, and leverage. That intersection of law and commercial strategy is what pulled me in, and frankly, it is what has kept me here ever since. Litigation finance is simply the natural next chapter of that very fascination.

Q Looking back, was there a defining early experience or moment perhaps even from your student or early professional years that influenced your decision to pursue this path?

A I wouldn't say there was a single lightning-bolt moment. Looking back, it was really a series of experiences, each building on the last, that shaped my career.

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A The first truly transformative experience was moving to Singapore. Working at a UK Magic Circle firm alongside exceptionally accomplished lawyers was both inspiring and eye-opening. Even as a junior lawyer, I was exposed to complex, high-value international disputes and had the opportunity to see cases from counsel's perspective. It was an environment that set an incredibly high standard of legal practice and made me appreciate the sophistication of international arbitration.

At the same time, whenever partners who were sitting as arbitrators needed a Tribunal Secretary, I actively volunteered. That became the second defining experience in my journey. Serving as Tribunal Secretary in SIAC arbitrations gave me a rare vantage point. You're close enough to counsel to understand the commercial realities and the impact disputes have on clients, but you're also sitting with the tribunal, watching how arbitrators evaluate evidence, assess credibility, and ultimately arrive at their decisions. It is an invaluable education in how cases are actually decided.

Singapore also introduced me to something that left a lasting impression: the culture of institutional arbitration and the deep trust within the arbitration community. I saw law firm partners confidently nominating partners from other firms as arbitrators, reflecting a profession built on credibility, independence, and mutual respect. It made me realize what a mature arbitration ecosystem looks like and what we should continue striving to build in India.

What became clear to me was that every experience sparked curiosity about the next perspective I hadn't yet seen. I had experienced arbitration from the counsel's side. I had experienced it from the tribunal's side. Naturally, I became curious about the institutional perspective, which led me to join SIAC.

Working at SIAC completed what I thought of as the full spectrum of international dispute resolution, understanding not just how cases are argued or decided, but also how they are administered and how institutions shape the process.

By then, I had developed a well-rounded understanding of international arbitration, and I found myself asking the next question: what is the next frontier? Around that time I got introduced to litigation finance.

It sat at the intersection of law, business, and strategy, and I was fascinated by its potential to transform access to justice and the economics of dispute resolution. That curiosity ultimately led me to take the next step in my career. So, if I had to identify the defining influence, it wasn't a single moment of inspiration. It was a consistent pattern of intellectual curiosity, each experience giving me a new perspective and motivating me to understand the next dimension of international dispute resolution.

Q Having worked across jurisdictions such as Singapore and India, how have these experiences shaped your understanding of cross-border disputes and the nuances of international arbitration?

A Singapore gave me an appreciation for institutional discipline, a jurisdiction where the courts consistently support the arbitral process and where efficiency and procedural certainty are deeply embedded. India taught me something equally valuable, i.e., adaptability. It is a jurisdiction with enormous commercial dynamism and potential, where the legal landscape continues to evolve and practitioners often have to think creatively while staying grounded in first principles.

Between the two, I found myself thinking less about whether an argument was intellectually elegant and more about whether it could withstand scrutiny, work in practice, and ultimately be enforced. International arbitration sits at the intersection of law and commerce, and these experiences taught me never to lose sight of either.

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A These perspectives have also allowed me to appreciate India's evolution as an arbitration jurisdiction, not just as something I have witnessed firsthand, but as something that is now for the world to see. Over the past decade and a half, particularly following the BALCO judgment, international arbitration in India has truly evolved from being an unfamiliar concept to becoming an integral part of cross-border commerce. The systemic shift is evident not only in the jurisprudence but also in the mindset of Indian businesses. Indian parties are no longer merely respondents in international arbitrations, they are increasingly sophisticated users of the process, proactively commencing claims and embracing arbitration as a strategic tool for resolving international commercial disputes.

Q Reflecting on your transition from arbitration practice and institutional roles to leading a litigation finance platform, what has been the most significant shift in your perspective on disputes?

A As counsel, you're trained to ask, "Can we win this case?" Your focus is naturally on building the strongest legal argument and achieving the best outcome for your client.

At an arbitral institution, the lens broadens. The question becomes, "Can this dispute be resolved cost and time efficiently, fairly, and independently?" Those are the very factors that contribute to the credibility of the institution and, ultimately, inspire confidence in the arbitral process. In litigation finance, the perspective changes once again. The question now is, "Is this claim, however meritorious, actually an investable opportunity?" That requires a completely different discipline. It compels you to hold legal merit, quantum and enforceability in the same frame, simultaneously, rather than sequentially, With experience in this space, you also develop a greater degree of predictability around the time management.

You're effectively wearing multiple hats at once, that of a counsel assessing legal strength, a tribunal considering the merits objectively, an institution focused on process, and, in many ways, a general counsel advising on commercial risk. Sure, it is less romantic than advocacy, but I've come to find it more honest and holistic way of looking at disputes.

Q What motivated your move into litigation finance, and how do you see this space complementing and transforming the traditional dispute resolution ecosystem?

A I kept noticing the same pattern across matters I worked on: meritorious claims going unpursued, or settled well below their true value, simply because the claimant couldn't stomach the cash-flow burden of a multi-year dispute. That seemed like an inefficiency worth fixing. Litigation finance doesn't replace the traditional ecosystem, it complements and has the capability of making it more efficient as well. By enabling the strength of a claim, rather than the strength of a balance sheet, to determine whether a dispute can be pursued, it helps level the playing field between parties of unequal resources - essentially turning a David versus Goliath dispute into one decided on legal merit. In doing so, it addresses a longstanding access-to-justice gap that litigation and arbitration, however effective as procedural mechanisms, were never designed to solve on their own. Ultimately, if you can enable a genuinely meritorious claim to be pursued while generating a commercial return, that's the ideal outcome for all stakeholders.

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Q On a lighter note, is there a personal motto or principle from your early life that continues to guide your professional decisions today?

A "Remain curious". Stay curious enough to keep asking questions, to understand where the industry is heading, and to keep learning. But curiosity alone isn't enough, you also need the courage to act on it. Looking back, curiosity has been the constant thread throughout my career, from counsel, to tribunal secretary, to SIAC, a top tier Indian law firm partner and now litigation finance. Each move was driven by a desire to understand a different perspective and willingness to explore it.

Q How do you see the interplay between arbitration, litigation finance, and global commerce evolving over the next decade?

A I expect the three to become increasingly inseparable. As cross-border commerce grows more complex and capital becomes more disciplined about where it sits idle, legal claims will be viewed less as contingent curiosities and more as recognised asset classes in their own right. Arbitration will continue to be the preferred mechanism for resolving international disputes, with litigation finance playing an increasingly important role, not only in funding claims, but also in award monetisation, enforcement strategies, and unlocking value from long-standing unenforced awards. I expect portfolio funding, award monetisation, and enforcement-focused capital to move from niche concepts to mainstream commercial tools.

In India, I believe litigation finance is poised to follow a trajectory similar to that of institutional arbitration a decade ago. What was once viewed with scepticism gradually became accepted through sustained engagement with practitioners, businesses and policymakers, and is today an integral part of the dispute resolution landscape. I had the opportunity to contribute to that transition during my time with an arbitral institution, where much of my effort was devoted to educating the market on the value of institutional arbitration. At ELF, I see a similar opportunity. Beyond sourcing funding, a significant part of our role is to build awareness, foster confidence and demonstrate how litigation finance can improve both access-to-justice and the efficient management of legal risk. That educational effort, in my view, is what will ultimately drive its wider adoption.

I also see the development of litigation finance as an investable asset class for investors in India. Just as investors in more mature jurisdictions have already enjoyed the benefits of investing in this asset class, I believe investors in India will, over time, enjoy the same fruits, given the potential for attractive returns that it has already demonstrated in certain jurisdictions.

Q How do you balance legal merit versus commercial viability when evaluating whether a dispute is worth pursuing or funding?

A Merit gets you through the door, but it doesn't necessarily get you funding. We evaluate every opportunity against three independent criteria: legal merit, quantum, and enforceability, each of which must independently withstand scrutiny.

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A A claim can be legally airtight and yet commercially not investable if, for example, the respondent lacks sufficient recoverable assets or its assets are located in jurisdictions where enforcement is uncertain or impractical. In those circumstances, even a successful claimant may be left with nothing more than a paper award. Equally, a claim with significant commercial upside but weak legal merit does not survive our screening. The sweet spot is where legal merit, recoverability, and commercial viability all align. Finding that intersection efficiently, which benefits both the funder and claimant without putting a drain on the funder's resources, is at the core of what we do.

Q Do you see businesses today becoming more strategic in approaching disputes as financial and risk-management decisions rather than purely legal battles?

A Absolutely, and I would say this shift has accelerated markedly in the last few years. General counsel now sit in the same conversations as Chief Financial Officers when deciding whether to pursue a claim, and rightly so. Litigation is capital deployment with legal characteristics, not the other way around. The businesses that treat disputes purely as legal matters, divorced from balance-sheet thinking, are increasingly the exception, and often the ones leaving value on the table.

Q Drawing from your experience with institutions like SIAC, how do you assess the role of arbitral institutions in enhancing efficiency, credibility, and enforceability in cross-border disputes?

A Institutions do something markets often undervalue: they manufacture trust at scale. A well-run institution gives parties from entirely different legal traditions a shared, predictable procedural language, which is worth more than any single clause in a contract. Having led SIAC's South Asia operations, I saw firsthand how much institutional credibility de-risks a transaction long before a dispute even arises. One of the most important services an arbitral institution provides is the scrutiny of awards. Award scrutiny helps ensure that awards are procedurally robust, legally sound, and can withstand the scrutiny of challenge on procedural grounds. That, in turn, enhances enforceability. When parties know that an award rendered under a particular institution is likely to withstand judicial scrutiny, it instils and strengthens confidence not only in that award, but also in the institution itself. In that sense, efficiency, credibility, and enforceability reinforce one another.

Finally, institutions are service providers. Parties choose them and pay for their services because they expect quality, consistency, and accountability. If there is a deficiency in the administration of a case, institutions should be prepared to acknowledge it and be accountable. That commitment to accountability is essential to maintaining the trust that underpins the entire arbitral process.

Q The Supreme Court has been actively pushing a stricter, pro-enforcement approach to arbitral awards. Do you think the judiciary is effectively rescuing arbitration from procedural abuse, or is it still an uphill battle?

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A I think the judiciary has certainly adopted a far more proactive and pro-enforcement approach over the last decade and a half. What I feel in my practice and experience, the real turning point was the Supreme Court's decision in BALCO in 2012, which marked a seismic shift in India's arbitration jurisprudence. In many ways, that was also consistent with the legislature's intent of building a stronger arbitration framework and promoting arbitration as an effective ADR mechanism.

That said, I don't think the judiciary is "rescuing" arbitration; rather, it is doing what it was always expected to do, supporting the arbitral process by limiting judicial intervention and respecting the finality of arbitral awards.

There is, of course, still more to be done. Building a truly arbitration-friendly jurisdiction is a constant endeavour rather than a destination. As cross-border commerce grows and more foreign capital is deployed in India, investor confidence increasingly depends not only on the quality of our arbitration laws but also on confidence that Indian courts will enforce arbitration agreements and awards in a predictable and consistent manner.

Ultimately, the judiciary plays a critical role in that ecosystem. Every pro-enforcement decision sends a strong signal to international investors that India is committed to providing a reliable and commercially sophisticated dispute resolution framework.

Q With Commercial Courts now resolving disputes within 12–18 months in some jurisdictions, is arbitration losing its biggest advantage – Speed?

A It is a fair challenge, and one arbitration can't simply wave away. But I would argue speed was never arbitration's only, or even primary advantage. It has always been one of several advantages. Confidentiality, party autonomy in selecting decision-makers with the relevant industry or technical expertise, procedural flexibility, and perhaps most importantly, the cross-border enforceability of awards under frameworks like the New York Convention remain difficult for any domestic court, however efficient, to replicate.

If anything, faster commercial courts should push arbitral institutions to sharpen their own procedural efficiency rather than rest on the speed argument alone. Competition, even from unexpected quarters, tends to be good discipline.

Q Litigation finance is often seen as democratising access to justice, but critics argue it can also encourage speculative or opportunistic claims. Where do you draw the line?

A I think that criticism misunderstands the economics of litigation finance. It is a sophisticated asset class, not a speculative one. Investment decisions are made after months of rigorous due diligence, often involving not only legal experts but a range of specialists, depending on the nature of the claim. At the end of the day, no investor wants to lose money. A funder's capital is at risk, so every investment decision is well informed, well-researched, and prudent. If anything, that level of scrutiny filters out speculative or opportunistic claims rather than encouraging them.

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AUG 2026
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FOUNDATION AND PRINCIPAL OF ARBITRATION
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