

Default seat in an International Arbitration

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Seat of Arbitration is one the most important concepts in the field of international Arbitration. Any party to an International Arbitration proceeding will be able to achieve its objectives only if the final award is enforceable in the country where it is required to be enforced. The awards passed from the seats of arbitration from the countries which are signatories of New York Convention² are enforceable in all the member countries (about 150 countries) subject to reciprocity limitations. Certain seats of Arbitration are popular because of the procedural law governing the seat and also the approach and effectiveness of the supervising courts in those jurisdictions. This is because, once a seat is chosen automatically the procedural law governing the seat and the supervising courts in that seat becomes the default choice of the arbitration. Many arbitration centers like London Court of international Arbitration LCIA, Singapore International Arbitration Center SICA, Hong Kong International Arbitration Center HKIAC etc., made use of the popularity of the seats and grew in a big way.

Default seat: Most of the arbitration centers of the world have specified a default seat in their arbitration rules. That means, if the parties after specifically mentioning the name of an arbitral institution, have failed to mention the seat of arbitration, the seat of arbitration shall be the default seat mentioned in the Rules. For example, if LCIA is specified in an arbitration clause and the seat is not specified, since LCIA Rules have specified London as the default seat, the arbitration seat for an arbitration under the said clause will be London. But it is also important to note that if there is an arbitration clause with a named arbitral institution, has also specified a procedural law but has not specified a seat then, the default seat will not be the seat and the seat shall be in the country of the selected Procedural law. For example, if parties have chosen LCIA as the arbitral institution and have chosen Arbitration and Conciliation Act, 1996 of India as the procedural law, then London is not the seat and seat will be in India and arbitration shall be administered by LCIA.

Institutions with no default seat: Many of the arbitral institutions have default seats in their arbitration rules, but not all the arbitral institutions have done the same. For example, International chamber of commerce (ICC) and Singapore International Arbitration Center (SIAC) are not having default clauses in their Arbitration Rules. That means by choosing SIAC as the administering arbitral institution, you are not automatically choosing Singapore as the seat of arbitration, you need to specify. If not, the arbitral tribunal must determine the seat of arbitration and the seat chosen by arbitrators may not be as good as Singapore. Hence the choice of the seat should be carefully exercised by the parties while drafting arbitration clause, instead of relying on the default clause.

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² New York Convention on Recognition and Enforcement of Foreign awards