

## DE JURE NEXUS LAW JOURNAL

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### IMPORTANCE OF SEAT AND VENUE UNDER ARBITRATION

#### **Abstract**

*In this modern era of business, trade and commerce, we find the mention of arbitration agreements. Arbitration is nothing but the use of a mediator or an arbitrator in order to settle disputes between two parties. This concept has recently gained popularity with the onset of large-scale international trade. Seat and venue are two similar appearing but different concepts that often pop up while scrutinizing any arbitral agreement. This article aims to unfurl what exactly these concepts are along with the relevancy and importance of seat and venue in lieu of the modern-day arbitration. It aims to consider the difference between the two along with their significance. It aims to analyze the benefits of proper usage of the two concepts. Beginning on this note, let us start with discussion on the topic.*

**Keywords:** *Seat, Venue, Arbitration*

#### **Introduction**

When one talks about the concept of seat under arbitration, it can be understood as the clause that determines the applicable law regulating the Arbitration process, including the procedural features. When the parties agree on the applicable law for the Arbitration agreement, it governs the entire agreement, including the procedural components of the arbitration. However, in a case where the parties have not expressly or by necessary implication chosen the law regulating the conduct and process of the arbitration, the conduct of the arbitration will be governed by the law of the seat (a preselected geographical location) of the arbitration<sup>1</sup>. For illustration, if an arbitral agreement selects London as the seat, then the British laws would be applicable on the arbitral agreement.

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<sup>1</sup> Devesh Juvekar, Dikshat Mehra, SEAT OF ARBITRATION, INDIA LEGAL UPDATE, September 2015, <https://www.manupatrafast.in/NewsletterArchives/listing/ILU%20RSP/2015/Sep/SEAT-OF-ARBITRATION.pdf>

On the other hand, the physical site of the arbitration hearings or deliberations is referred to as the venue. It is the actual physical place where the arbitral proceedings take place. It may sound similar to the concept of seat but are the two really the same? Can they be used interchangeably?

### **Are venue and seat the same? Are they interchangeable?**

The short answer is no, both the concepts are different and cannot be used interchangeably, in *Union of India V. Hardy Exploration and Production (India) Inc*<sup>2</sup>. The parties agreed to hold the arbitration in Kuala Lumpur, but were mute on the seat. The arbitration processes began after disagreements emerged, also the award was granted at Kuala Lumpur. It was noted that the parties had named Kuala Lumpur as the arbitration venue, but this did not imply that Kuala Lumpur would become the seat of arbitration. The Court came to the conclusion that the venue could only become an arbitration seat if something else was added to it concurrently. Thus, it can be inferred that the supreme court of India is of the view that both the concepts are distinct and have their own independent existence. Neither of them can equate the other. It has to be specifically mentioned in the agreement that which place is to act as the seat and which place is to act as the venue. This decision also gives rise to the possibility of vesting the jurisdiction of seat and venue at two geographically distinct places, it is possible for one to have the seat in India and the venue in Singapore.

### **The significance of venue under arbitration**

The involvement of local courts in respect to the arbitration, the arbitration's conduct, and, ultimately, the enforceability of the award is influenced by the arbitration's location. Even before the arbitration process has begun, local courts in the chosen jurisdiction are frequently called upon to provide important assistance to the parties. Even though arbitration is primarily an extra-judicial procedure, it would not be unusual for a party to file a lawsuit seeking provisional relief, questioning the legitimacy of an arbitration clause, or declaring that the specific dispute does not fall within the arbitral tribunal's jurisdiction and therefore should be litigated in court. So long as the contract between the parties has a valid and enforceable arbitration clause, arbitration works best when courts rapidly reject objections to arbitral jurisdiction. The courts' approach, on the other hand, will be based on a variety of considerations that will differ significantly from jurisdiction to jurisdiction<sup>3</sup>.

Most parties think that when the arbitral procedure begins, the courts situated locally in the venue have no further authority over it. However, this isn't always the case. The courts have the authority to interfere in the arbitral procedure, and they frequently do so. Although Evidence-collection is essential for successful dispute settlement, arbitral tribunals have little authority over third parties. As a result, parties may require the aid of local courts to get third-party testimony or require them to submit evidence. This is how the venue courts can influence the proceedings.

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<sup>2</sup> *Union of India V. Hardy Exploration and Production (India) Inc.*, (2019) 13 SCC 472

<sup>3</sup> Michael Ostrove, Claudia Salomon, and Bette Shifman, *Importance of venue selection in international arbitration*, Oxford University Press, FEBRUARY 10TH 2014, <https://blog.oup.com/2014/02/importance-of-venue-selection-in-international-arbitration/>

Even after the proceedings are over and it is time for the award, most courts have the authority to dismiss the awards on the grounds of being “against the public policy” this interpretation of public policy is different from venue to venue, the courts having been vested with the authority to interpret the public policy can have a significant influence on the grant of award.

Hence, the venue shall be selected after giving due regard to the above stated.

### **Significance of Seat under arbitration**

In *Bharat Aluminum Company Ltd v. Kaiser Aluminum Technical Service Inc*, the supreme court held that when the parties accept a geographical location as the seat for the arbitration, they accept the law of that location to be applicable for the governance of their arbitral proceedings<sup>4</sup>.

The choice of a geographical location as the seat of arbitration will have implications, as it will imply that the courts of that jurisdiction will have supervisory jurisdiction over the arbitral process, as well as the procedural law of the arbitration proceedings will be that jurisdiction's law.<sup>5</sup>

The wrong seat can cause the arbitration to be delayed significantly, raise the risk of simultaneous judicial proceedings, and permit the award to be called into question on diverse grounds in local courts, that might or might not be reliable or might be in a jurisdiction where the opposite party is well-known and has connections, all of which pose obvious risks.

Since the arbitration processes take place in the seat of arbitration, it is also where the award is believed to have been issued. The applicable law is governed by the arbitration seat, which will also establish the grounds for challenging the award. Thus, if one does not wish to have any hassles in getting the awards in cases of dispute, the seat must be chosen wisely, else, there can be deliberately imposed legal roadblocks to evade the award.

Cordial arbitration in a jurisdiction is indeed a significant factor because when the arbitration is amicable, the court intervenes less and solely in support of the arbitration. Hence having considered all the above stated benefits regarding the correct choosing of the seat of arbitration, it can be safely inferred that the choice of the seat in an arbitration agreement has significant importance and hence shall be chosen wisely.

### **Conclusion**

Having considered what the concepts of seat and venue are we can take away that seat is the concept that determines the implication of the law of a particular jurisdiction, for example if Z, an Indian enters into an arbitral agreement with Y, a Sri Lankan, and the agreement has chosen Singapore as the seat, the laws of Singapore would be applicable while resolving a dispute between Z and Y. by the virtue of being the seat of the agreement, the Singaporean law shall have jurisdiction over the agreement.

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<sup>4</sup> *Bharat Aluminum Company Ltd v. Kaiser Aluminum Technical Service Inc*, (2012) 9 SCC 552

<sup>5</sup> Hiroo Advani, Sheikh Yusuf Ali, Manav Nagpal, *Seat Vs Venue in contemporary arbitral jurisprudence*, May 6 2021, <https://www.scconline.com/blog/post/2021/05/06/seat-v-venue-in-contemporary-arbitral-jurisprudence/> (2021 SCC Online Blog Exp 30)

On the other hand, when we discussed about the concept of venue, we inferred that it is the concept that determines the physical place where the arbitral proceedings shall take place, for example, the above case of Z and Y, the venue stipulated in the agreement was Kuala Lumpur, it implies that the dispute though administered by Singaporean law, the suit would be physically heard in Kuala Lumpur.

We also saw how the supreme court is also of the view that both of these concepts are distinct and have their own independent existence. We then moved on to discuss the impact these concepts can have on an arbitral agreement, this in turn helped us to establish the significance of each of the concepts.

Now that we are well aware of the importance of these concepts, it is advisable that significant attention should be given to the seat and venue in a contract of arbitration, the agreement shall expressly mention the seat and venue and any ambiguity shall be avoided. It is also necessary that both the parties agree with the seat and venue clauses and give their due consent to the same so as to avoid any future legal battles. The parties must specifically agree on the arbitrator's seat and not use terms like venue or place interchangeably, for both the terms have different meanings.

At last, if all due regard is given to all the above discussed, the resulting agreement shall provide for a smooth dispute resolution if arbitration is ever required.