



FOX MANDAL

ARBITRATION



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FOXMANDAL

FoxMandal (“**FM**”), one of India’s oldest and largest full service law firm traces back its origin to Kolkata when in 1896, J K Fox and G C Mandal, joined in partnership to establish one of the first Indo-British law firms by the name of “FoxMandal”. Upto 1984, the firm grew in Kolkata and established itself as a leading law firm in India. In 1984, the management of the firm was persuaded to open an associate office in New Delhi under the name of FoxMandal with local partners based in New Delhi.

The immense success of the firm’s operations in New Delhi was instrumental in establishing other associate offices in India, UK and Bangladesh including Bangalore, Chennai, Dhaka, Hyderabad, Kolkata, Mumbai, Noida, New Delhi, London and Surat. FM is a well-reputed full service law firm presenting an appropriate mix of the necessary legal expertise, industry specialization and commercial acumen. This firm of advocates, solicitors and notaries, comprises of over 150 lawyers with 20 partners and 100 para-legal staff. Our offices situated in all the important regions in India ensure that our clients receive cost-effective, value added and fully integrated services.

Over the years, FoxMandal has been ranked as the top firm in India by various international journals. **Mr. Som Mandal is recipient of Economic Times Excellence in Leadership Award in August 2022.**In the year **2020**“**Legal Comprehensive**” recognised **Mr. Som Mandal** amongst one of the best “**TOP 100 Lawyers in the world**”. In the year **2019**FoxMandal was awarded “**Times Power Icons**” award for exemplary contribution in the field of “**Global Legal Service**”. In 2018 AI (Acquisition International) awarded FoxMandal Global Excellence Award “**National Law firm of the year 2018-India**”.In 2018 ICFM (Inter Continental Finance & Law Magazine nominated FoxMandal as one of the top 100 leading firms in the world.FM was also acknowledged by “**ACQ5 Law Awards 2017**” for “**National Law Firm of the Year**” for work done across all areas. FM was also acknowledged by “**Who’s Who Legal (WWL) 2016**” and “**Mr. Som Mandal was featured as a top legal consultant in Energy and Mining sector in India**”. FM was recognized by “**Legal 500 magazine 2015 edition**” for work done across all

areas. FM was awarded the **“India Law Firm Awards 2014”** for the best **Corporate Commercial Law Firm** by **“India Business Law Journal (IBLJ)”**. FM was featured in **“The lawyers- 2014 Asia Pacific 150”** amongst **“Top 10 Indian law firms”**. FM won **“Acquisition International M&A award 2014”**. FM was awarded the **“Disinvestment law firm of the year – India”** by **Intercontinental finance magazine (ICFM)**, 2014. FM won the **“Acquisition international Dispute Resolution Firm of the Year Award 2013”**. The firm won **“Intercontinental Finance 2012 Global Award”**. FM was awarded the best **“Dispute Resolution Law Firm 2012 Finance Monthly Law Awards”**. FM won **“The Best National Law Firm, 2008”** award by the **International Legal Alliance Summit & Awards, 2008** at Paris and distinguished during the International Legal Awards Ceremony amongst the leading law firms from 22 countries. We have been awarded the **“Employer of Choice, 2008**, a response among over 15,000 lawyers region-wide by **ALB (Asian Legal Business)**. FoxMandal has been recognized with **“Client Choice Award, 2007”** in India from more than 1,300 individual assessments received from corporate counsel worldwide by **ILO(International Law Office)**, the **Official Partner to the International Bar Association**, for FM stands apart for the excellent client care and the quality of service. It has been awarded for the law firms' ability to add real value to their clients' business above and beyond the other players in the market. Amongst others, we have been adjudged as **“The Best Law Firm of the Year”** for India in 2006 by **IFLR (International Financial Law Review)**, a Euromoney publication.

The firm's practice areas includes, banking and finance, (including project finance, capital markets and mutual funds), initial public offerings, insurance, commercial disputes, property law and conveyancing, corporate and commercial law, energy (including coal, oil and gas), mining, telecommunications, intellectual property, partnership, testamentary, air law (including aircraft leasing), shipping, taxation, direct and indirect, and dispute resolution by litigation and arbitration before international and domestic tribunals.

The firm's strength is its team of experienced and trained lawyers who treasure the value of diligence and knowledge as well as creativity and

innovation in addressing their client's needs. FM aims to offer to its clients, legal advice that meets the clients' needs and expectations, and in this it has been hugely successful as is evidenced by the firm's ratings by various international journals.

INTERNATIONAL ARBITRATION

As India continues to attract increasing amounts of foreign investment, India has emerged as an attractive destination for many Multinational Corporations (MNCs). Burgeoning international commerce is accompanied by increasing cross-border commercial disputes. Given the need for an efficient dispute resolution mechanism, Arbitration and Alternate Dispute Resolution (ADR) has emerged as a faster, cost-effective option for resolving international commercial disputes and preserving business relationships. Since arbitration is based upon the principle of party autonomy and offers flexibility to both parties, there is an increasing trend towards resolving disputes by means of Arbitration.

FoxMandal provides the essentials for managing a Successful Arbitration

It has relevant expertise and an unparalleled record when it comes to arbitration in trans border and cross cultural disputes. While advising clients we take care that the following are in place:

1. A comprehensive arbitration agreement.
2. Familiarity with the procedural laws that would apply to the dispute.
3. The reasoning to choose a particular mechanism for the dispute resolution.
4. Selecting the right Arbitrator/s.

ARBITRATION EXPERIENCE

The increasing growth and liberalisation of the Indian economy is creating new business opportunities particularly with the expansion and modernisation of the country's infrastructure. We are pleased to be able to offer the benefit of our arbitration experience to clients in the following areas:

- Investment Treaty Arbitration;
- Commercial/ Contractual Disputes;
 - ✓ International and Domestic
- Construction Industry disputes

INVESTMENT TREATY ARBITRATION

FoxMandal is the first and only law firm in India which has the requisite expertise to handle Bilateral Investment Treaty (BIT) disputes.

FoxMandal has an extensive investment treaty arbitration experience that requires a comprehensive understanding of the Bilateral Investment Treaties and other Multi-lateral treaties.

It was in this backdrop that FoxMandal advised the Government of India in relation to its dispute with the investors in the Dabhol Power Project set up in the State of Maharashtra. The arbitration, which was conducted under the UNCITRAL Rules, with the seat of arbitration in London, was a front runner in the arena of dispute resolution. FoxMandal not only represented the Government of India in the arbitration proceedings but also advised in the restructuring of the Project and the eventual settlement and the final resolution of the dispute in relation to the Project. This was the first of several billion dollar claim against Government of India brought under a Bilateral Investment Treaty. The following are noteworthy.

- Acted for the Government of India in the biggest ever, US\$ 6.5 billion arbitration claim against GOI in relation to the Dabhol Power Project. This was the first ever BIT claim brought against India by GE and Bechtel as shareholders of DPC. The arbitration proceedings were under UNCITRAL Rules.
- Acted for GOI against a Dutch entity OPP, as a shareholder to the Dabhol Project.
- Acted for GOI against the seven offshore lenders to the Dabhol Power Project.
- Acted for Government of India against Overseas Protection Investment Corporation in relation to OPIC claims against Government of India alleging expropriation.
- Acted for Government of India (GOI) in a BIT arbitration where a White Industries Ltd. an Australian entity initiated a BIT arbitration against GOI arising from its contract with an Indian public sector company namely Coal India Limited.
- Advised the Zambian Government as Counsel in an UNCITRAL arbitration concerning a claim for alleged expropriation of foreign investments.



COMMERCIAL/ CONTRACTUAL DISPUTES

International

- Acted for Government of India in an UNCITRAL arbitration initiated by Cairn Energy having its registered in Scotland and Australia. Venue of the proceedings was London, United Kingdom. Assisted in settling the matter successfully after it went into arbitration.
- Acting for Ministry of Petroleum, Government of India in a multi billion dollar UNCITRAL arbitration initiated by two Oil and Gas Exploration and Production companies incorporated in Cayman Island namely Reliance Industries Limited and BG Exploration and Production India Limited.
- Advised M/s. Indiabulls Financial Services Limited against twenty nine(29) companies for default of repayment of loan amounts disbursed under Loan-cum- Pledge Agreements.
- Advised a Korean Construction Company in an arbitration against an Indian company.
- Advised a UK based international development company in an arbitration against an Indian State Government.
- Advised a Bangladesh-based Government Power Company in a Euro 15 million claim with a foreign investor in an arbitration having its seat in Singapore governed by the UNCITRAL Rules.
- Advised Hitachi (Arbitration/Commercial Court proceedings).
- Defending a multi-million dollar claim in arbitration proceedings against a London based company engaged in the business of Petrochemicals.
- Defended a US based company in arbitration proceedings in relation to a multi million dollar claim against them by a public sector company in India.
- Acted for an Italian power generation company in an arbitration against an Indian mining company.

- Ministry of Defence - Six separate arbitration proceedings initiated by Denel Pty Ltd., a company incorporated under the laws of South Africa, against Government of India in relation to termination/holding of contracts by the Ministry Of Defence. The total value of the contracts amounts to more than 5 million dollars.
- Government of India - Arbitration proceedings initiated by APTEC, against the Government of India for having withheld amounts in relation to damages and warranty claims of Gol.
- Carl Zeiss Jena GmbH- a company incorporated under the laws of Germany pursuant to disputes with the Gorakhpur Development Authority. Represented Carl Zeiss and apart from our representation before the Tribunal on behalf of Carl Zeiss, we also advised the client on working out a possible settlement with GDA.
- Represented Balli Petrochemicals, UK - Arbitration proceedings have been initiated by the parties for the adjudication of the disputes.
- Represented a South African pharmaceutical company in a multi-million dollar claim in arbitration proceedings against an Indian pharmaceutical company.
- Acted for Saipem, a Portugal based subsidiary company of an Italian company with respect to the arbitration proceedings in a dispute against Gujarat State Petroleum Corporation.
- Acted for Steel Authority of India Ltd against AMCI Pty and Vale Pty in relation to a breach of contract for supply of broadleaf coking coal leading to a successful ICC Award of Rs. 750 Crores.
- Acted for MMTC against M/s Land Sea and Air Transport Ltd, a Company based in Hong Kong.
- Acting for Hebei Mountain Shipping Company Limited, a company based in Hong Kong against Mercator Lines Limited for a demurrage claim.
- Acting for Kuwait Airways Corporation in their claim against Indian entity and successfully got an award in their favour.

Domestic

The dispute resolution group of the Firm has acted for a broad spectrum of clients. The arbitration team has a diverse domestic clientele ranging from the Government to Public Sector Undertakings to private organisations in the corporate and financial sectors. The team has been exposed to varied issues and has successfully handled arbitrations relating to the construction industry, infrastructure, maritime arbitration and other corporate/commercial issues.

- Man Industries- Arbitration proceedings in relation to encashment of Bank guarantees against Indian Oil Corporation Ltd.
- Represented Government of India, Department of Fertilizers in arbitration proceedings initiated by Zuari Maroc Phosphates Ltd. against the Government of India in relation to the disinvestment of Paradeep Phosphates Ltd. Zuari. The dispute related to a claim of over Rs. 150 crores against the Government of India under the Share Purchase agreement dated 28.02.2002 pursuant to the disinvestment of paradeep Phosphates Ltd.
- Acting for M/s. India Bulls Power Limited in an arbitration claim initiated by M/s Tata Power Trading Company Limited in relation to disputes arising out of the Power Purchase Agreement executed between the parties.

INSTITUTIONAL ARBITRATION EXPERTISE

FoxMandal lawyers frequently serve as client advocates under the following rules of International Arbitral Institutions:

- ❖ International Chamber of Commerce (ICC).
- ❖ Council of Arbitration for Sports (CAS).
- ❖ London Court of International Arbitration (LCIA).
- ❖ Singapore International Arbitration Centre (SIAC).
- ❖ Indian Council of Arbitration (ICA).
- ❖ United Nations Commission on International Trade Law (UNCITRAL).
- ❖ WIPO Arbitration.

CONSTRUCTION INDUSTRY DISPUTES

We have extensive experience on claims involving breach of contract; tortious interference with contract; design and construction defects; fraudulent inducement; conspiracy; deceptive trade practices; and personal injury. Our lawyers also have significant experience on various damage models related to construction cases, including increased construction costs, lost profits, and consequential and exemplary damages.

FoxMandal specializes in providing specialist and cost effective legal advice on all aspects of construction arbitration proceedings and construction adjudication (both national and international) including:

- Presently acting for a German company in relation to arbitration proceedings filed against them by an Indian company. This claim arises out of disputes relating to construction of a planetarium in an Indian state.
- Acting on behalf of all types of construction industries clients in construction arbitration proceedings.
- Advising upon and drafting notices of arbitration, statements of case and defenses for construction arbitration proceedings.
- Advocacy on behalf of clients during construction arbitration hearings or proceedings.
- Providing clients with specialist advice upon any aspect of the relevant law relating to construction arbitration.
- One of our partners is the India's representative at the ICC Commission on Arbitration.
- Having acted for the Government of India, we feel we are in a better position to understand the mechanism and approach towards dealing with disputes involving the Government and can offer an unrivalled "insider perspective".

OUR TEAM

As commercial disputes become more complex, arbitration of late has become more contentious and requires the relevant expertise to ensure a fast resolution. Therefore, the Commercial Arbitration group at includes Lawyers with a strong background on litigation that has been pursued not only in India but also the world over. We have Lawyers with fluency in Chinese, Korean and Japanese to help us and understand several cross border issues more intricately.

FoxMandal in-house Lawyers and Partners have teamed up with Counsels recognised all over the world in relation to their experience in treaty disputes to address the issues in the best possible manner. In that relation Mr. Khawar Qureshi, a Queen's Counsel based in London, is a leading name across the globe.

Our Partners regularly speak at various International Arbitration Conferences and Seminars.

Our Lawyers have worked and trained in the Arbitration practice groups of International Law Firms in jurisdictions such as Singapore, London and Hong Kong and have also specialised in International Arbitration at eminent law schools such as the London School of Economics as well. Our Lawyers also attend regular workshops, conferences and seminars on Arbitration worldwide.

Our lawyers are on the panels of various arbitration related forums. For instance we are on the legal panel of Construction Industry Arbitration Council (CIAC), which was set up in cooperation with Singapore International Arbitration Centre (SIAC) to address construction and infrastructure related disputes.

ONE OF THE WORLD'S "ARBITRATION BEST"

Our peers in the past have acknowledged us in several ways. To quote a few...

- Our partners have been ranked by The Asia Pacific Legal 500 in 2013, 2014, 2015 and 2016 editions as leading dispute resolution lawyers in India.

- The Asia Pacific Legal 500 (2012)

"FoxMandal represents clients in arbitration and litigation within many sectors including pharmaceuticals and energy. Recent highlights include representing a Portuguese company in a contractual dispute in the energy sector. The firm also has a strong track record representing clients in investment treaty arbitration."

- Ranked by Asia Pacific Legal 500 for 2009-2010 amongst leading individuals in the field of dispute resolution.
- Recommended by Asia Pacific Legal 500, 2005-2006, 2004-2005 & 2003-2004 editions, and Asia Law-Leading Lawyers 2005 (June, 2005 Edition) in field of litigation and arbitration
- The Asia Pacific Legal 500 (2004/2005 Edition)

"National firm FoxMandal has a stellar reputation across the board, with particular expertise in commerce, finance and industry disputes. A healthy proportion of clients are foreign companies requiring advise in India such as Deutsche Bank and Shanghai Belling Company."

- The Asia Pacific Legal 500 (2003/2004 Edition-Pg.206)

"FoxMandal enjoys a top-notch reputation for litigation and dispute resolution."

- Chambers and Partners, United Kingdom (2012)

"The firmFoxMandal has much experience of representing clients before tribunals, high courts and the Supreme Court. It stands out for its adept handling of bilateral investment treaty arbitrations; a recent highlight on this front saw it acting for the government of India in Arbitration against an Australian company alleging expropriation of investments."

"An established brand name."

- Ranked by Chambers and Partners UK, 2010, amongst leading dispute resolution lawyers in India.

OUR APPROACH

With our strategically located offices spread nationwide in Mumbai, New Delhi, Bangalore, Kolkata, Hyderabad, Chennai, Noida and Surat, FoxMandal ensures our fully integrated and cost effective service.

Our strengths derive from our commitment to excellence, not only from our numbers, and we are determined to maintain those standards as we expand.

We are an energetic and enterprising legal practice committed to providing the highest possible levels of service.

We believe in establishing and maintaining strong working relationships with each of our clients and in taking time to understand their particular businesses, needs and objectives. This approach enables us to assist our clients in achieving their strategic goals.

We combine commercial acumen with technical expertise to offer creative but practical solutions which facilitate our clients' objectives. It is our aim to provide a service which exceeds our clients' expectations.

We sincerely strive to become the adviser of first choice to each of our clients in every area of expertise.



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