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Key points

There are neither formally recognised arbitration bodies nor national institutional rules in Pakistan. The current Arbitration Act 1940 is not based on the UNCITRAL model law. A bill for the enactment of a new consolidated arbitration law based on the UNCITRAL model law was presented in the lower house of the Parliament, the National Assembly, on 27 April 2009. This bill is still pending before the National Assembly.

There is a degree of supervision of arbitrators; some interim measures are also available.

The tribunal may refer questions of law to the court but is not bound by the court's advice on questions of law.

The tribunal may refer the draft award to the court and is bound by the court's review. The parties may, in their arbitration agreement, exclude the right of the tribunal to refer the draft award to the court for review.

Appeals are allowed only where a procedural irregularity has occurred.

Pakistan is a party to both the New York and the Washington (ICSID) Conventions, although there are currently no implementing legislations.

Confidentiality

There is no provision in the Arbitration Act that deals with confidentiality. It is therefore advisable to include a confidentiality provision in the arbitration clause.

It is, however, not clear whether the documents filed by the parties and deposition taken by the arbitrator may be kept confidential, bearing in mind the provisions of section 14 of the Arbitration Act. Section 14 requires the arbitrators to file the signed award along with the record of evidence in the court, which becomes part of the court's record. Since the court's record is easily accessible to the general public, anyone can obtain copies of the award and record of evidence filed by the arbitrators.

For a model confidentiality clause, see the Arbitration section on drafting arbitration clauses.

Model arbitration clause

There are no model clauses specific to Pakistan as there are no Pakistani arbitration institutions.

See the Arbitration section for best practice in drafting arbitration clauses.

1 What arbitration bodies are there within the jurisdiction?

There are no formally recognised arbitration bodies in Pakistan.

2 Is there an Arbitration Act governing arbitration proceedings, and is it based on the UNCITRAL model law?

The current Arbitration Act 1940 (Arbitration Act) governs and regulates domestic arbitration proceedings in Pakistan. It is not based on the UNCITRAL model law.

A bill for the enactment of a new consolidated arbitration law based on the UNCITRAL model law was presented in the lower house of the Parliament, the National Assembly, on 27 April 2009. This bill is still pending before the National Assembly.

3 What are the available rules?

Under the Arbitration Act, the parties are free to adopt procedures of their choice, subject to certain limitations. Since there are no national arbitral institutions, there are no national institutional rules; however, the Pakistani High Courts have formulated some rules within the framework of the Arbitration Act.

4 What supervision is there of arbitrators and their awards?

If an arbitrator appointed with the consent of the parties becomes incapable, or if the arbitrators do not appoint an umpire when required to do so, any party may ask the existing arbitrators to agree to or make a new appointment. If the appointment is not made within 15 days after the request, the party which made the request may apply to the court, which will make the necessary appointment.

If an arbitration agreement calls for the appointment of two arbitrators, one by each party, and any arbitrator so appointed fails to act, or dies, the party that appointed the arbitrator may appoint a new arbitrator. If no such appointment is made after 15 days following a request by the other party, that party may declare its arbitrator to be the sole arbitrator, whose award shall be binding on both parties.

If an arbitrator or umpire fails to proceed with the arbitration for a month after a request by either party to do so, a new appointment may be made, with the intervention of the court if necessary. At the request of either party, a court may remove an arbitrator or umpire who unreasonably delays the arbitral process. The court may also remove an arbitrator or umpire who has committed misconduct (personal or relating to the proceedings). In such cases the court has the authority to fill the vacancy.

An arbitrator may refer questions of law, or the draft award, to the court. The tribunal is not bound by the court's advice in relation to questions of law, but is bound by the court's review of the draft award. The parties may, in their arbitration agreement, exclude the right of the tribunal to refer the draft award to the court for review.

The court may also, upon request of either party, modify or correct an award on a matter that is not part of the referral to arbitration, or where the award is imperfect in form or contains an obvious error.

The court may remit an award where the award has left undetermined any matters that were referred to arbitration, or where it has determined any matters not referred to arbitration, or where it is so indefinite as to be inapplicable in practice. The court may also remit an award that does not give reasons in sufficient detail.

5 How quickly can a tribunal be set up?

If both parties cooperate, a tribunal can be set up quickly. If one of the parties fails to appoint an arbitrator, the court may do so 15 days after a request from either party: this process may be time-consuming.

6 What happens if one party refuses to participate in the process?

Under the Arbitration Act, the court will, on application of the arbitrators, summon the parties and witnesses to appear before the arbitrators. If the parties or witnesses fail to appear before the arbitrators or to produce evidence, the arbitrators may make an award on the basis of the evidence before them. The recalcitrant party will be subject to the same sanctions as are available in court proceedings, including the issuance of a warrant of arrest requiring the party to appear and produce documents.

7 What interim measures are available?

The courts may order the preservation, interim custody or sale of any goods that form part of the subject matter of the arbitration. The courts may also order the detention, preservation or inspection of any property or thing that forms part of the subject matter of the arbitration.

8 What right is there to challenge the appointment of an arbitrator?

If an appointed arbitrator or umpire fails to act, or is incapable of acting, that arbitrator may be removed. On the application of either party, the court may also remove an arbitrator or umpire who unreasonably delays the proceedings or the making of an award. The court may also remove an arbitrator or umpire who has committed misconduct (personal or relating to the proceedings).

9 Can a party appeal the arbitrator's decision and, if so, are there any time limits to be aware of or unusual provisions?

The award given by an arbitrator or umpire is final and cannot be appealed on a point of law. However, appeals are permissible where there has been a procedural irregularity.

10 Is Pakistan a party to the New York convention?

Pakistan is a party to the New York Convention; it ratified it on 14 July 2005. Pakistan has exercised a reservation, and will only recognise and enforce awards from other New York Convention states.

11 Will an arbitration award be enforceable in Pakistan and, if so, what is the procedure?

Pakistani law differentiates between domestic and foreign arbitral awards; each is enforced under a separate law.

Domestic arbitral awards

If the court sees no cause to remit or set aside the award, after the expiration of the time allowed for either party to apply for the award to be set aside, the court will proceed to pronounce judgment and issue a decree. Such a decree may only be appealed if it is in excess of, or not in accordance with, the award.

Foreign arbitral awards

The New York Convention is currently being implemented in Pakistan through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2007 (Ordinance No. LVIII of 2007) (NYC Ordinance) which came into force in Pakistan on 3 October 2007. The NYC Ordinance applies to arbitration agreements made at any time,

and to foreign arbitral awards made on or after 14 July 2005. Under the NYC Ordinance, a Pakistani court will recognise and enforce a foreign arbitration award in the same manner as a judgment or an order of a court in Pakistan. A foreign arbitration award enforceable under the NYC Ordinance is treated as binding.

Section 7 of the NYC Ordinance lays down the grounds under which a foreign award may be challenged in Pakistan. These grounds are the same as those laid down in article 5 of the New York Convention.

The current status of the NYC Ordinance is uncertain following a decision of the Pakistani Supreme Court to ask the Government of Pakistan to present before Parliament for ratification certain ordinances, including the NYC Ordinance. At the moment, the NYC Ordinance is before the Parliament for approval. This is likely to happen within the limitation period laid down by the Supreme Court.

Awards issued under the Washington Convention

Arbitration proceedings in which the Washington (ICSID) Convention applies, and the enforcement of awards issued by ICSID, are governed by the provisions of the Arbitration (International Investment Disputes) Ordinance, 2007 (Ordinance No. XXXVIII of 2007) (AIID Ordinance), which came into force in Pakistan in July 2007. Like the NYC Ordinance, section 4 of the AIID Ordinance obliges a Pakistani court to execute an award issued by ICSID in the same manner as if it were a judgment of the High Court. The provisions of the Arbitration Act do not apply to arbitration proceedings initiated under the Washington (ICSID) Convention (section 7, AIID Ordinance).

The AIID Ordinance is currently before Parliament for ratification, as with the NYC Ordinance.

See the Reference section for more detail on ICSID (the International Centre for the Settlement of Investment Disputes) and the Washington (ICSID) Convention.

12 What are the likely costs of the arbitration?

The costs of arbitration proceedings vary from case to case. The arbitrators' fees are mainly governed by agreement between the parties; if there is no such agreement they may be submitted to the court for review. The court may also order costs between the parties in cases where this matter is not dealt with in either the arbitration agreement or the award.

13 Are split clauses valid and enforceable?

Split clauses allow one or more parties to elect arbitration or litigation after the dispute arises.

A contractual term where the parties agree to settle their existing or future disputes either through arbitration or litigation appears to be enforceable under the Pakistan law. Similarly, a contractual term allowing one or more parties to elect the mode of settlement of disputes – through arbitration or litigation – also appears to be enforceable under Pakistani law, provided it does not place an absolute restraint against the enforcement of a party's rights.

There is no reported judgment of a Pakistani court dealing with this specific issue. ■