

DISPUTE RESOLUTION

Pakistan



Dispute Resolution

Consulting editors

Martin Davies, Alanna Andrew

Latham & Watkins LLP

Quick reference guide enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

Generated 23 May 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

Table of contents

LITIGATION

Court system

Judges and juries

Limitation issues

Pre-action behaviour

Starting proceedings

Timetable

Case management

Evidence – documents

Evidence – privilege

Evidence – pretrial

Evidence – trial

Interim remedies

Remedies

Enforcement

Public access

Costs

Funding arrangements

Insurance

Class action

Appeal

Foreign judgments

Foreign proceedings

ARBITRATION

UNCITRAL Model Law

Arbitration agreements

Choice of arbitrator

Arbitrator options

Arbitral procedure

Court intervention

Interim relief

Award

Appeal

Enforcement

Costs

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

Requirements for ADR

MISCELLANEOUS

Interesting features

UPDATE AND TRENDS

Recent developments

Contributors

Pakistan



Yousaf Khosa
yousaf.khosa@riaabg.com
RIAA Barker Gillette



Omer Soomro
omer.soomro@riaabg.com
RIAA Barker Gillette



Mayhar Mustafa Kazi
mayhar.kazi@riaabg.com
RIAA Barker Gillette



Shahbakht Pirzada
shahbakht.pirzada@riaabg.com
RIAA Barker Gillette



LITIGATION

Court system

What is the structure of the civil court system?

Civil courts in Pakistan are established under the Civil Courts Ordinance 1962, which has been adopted, subject to certain modifications, in each of the four provinces and the Islamabad Capital Territory, and comprises the following hierarchy of courts, in descending order:

- the court of the district judge;
- the court of the additional district judge; and
- the court of the civil judge.

Each civil court is presided over by a single judge who hears and decides all cases in the court. Generally, the courts of the civil judges serve as the courts of first instance. Civil judges are divided into classes, with each class having a different pecuniary jurisdiction. Courts of district judges generally exercise appellate jurisdiction. However, they also serve as courts of first instance for certain types of cases, such as defamation. The courts of the additional district judge discharge such functions of the district judge as the district judge may assign, and in the discharge of those functions that court exercises the same powers as the court of the district judge. One important exception to the aforesaid is in the district of Karachi, where the original jurisdiction to hear civil claims valued at more than 65 million Pakistani rupees is with the High Court of Sindh.

An appeal against a judgment of a civil judge may be made to the court of the district judge or the High Court, depending on the value of the suit. A decision of the court of the district judge in appeal may be challenged in appeal before the High Court. Where no appeal lies against an order or decree passed by the district judge in an appeal, that order or decree may be challenged by filing a revision before the High Court. Ordinarily, appeals from the High Court lie before the Supreme Court.

In addition to the ordinary civil courts, Pakistan has set up various specialised courts and tribunals that exercise jurisdiction over certain types of civil disputes, such as banking courts, rent courts, consumer courts and intellectual property tribunals. Further, there may also be an administrative division of cases among the various benches of a court.

All the courts mentioned above, including all ordinary and specialised courts, fall within the supervisory jurisdiction of one of the five High Courts in Pakistan. While the High Courts generally exercise appellate jurisdiction, they are conferred with original civil jurisdiction in certain matters, including company and banking cases, by way of statute.

Law stated - 07 April 2022

Judges and juries

What is the role of the judge and the jury in civil proceedings?

In Pakistan, judges are the exclusive arbiters of law and fact. There is no jury system in Pakistan. As in most common law jurisdictions, the Pakistani legal system is adversarial, and the judges in Pakistan adopt a passive role when hearing cases.

A judge exercising civil jurisdiction is bound to conduct every case in accordance with the procedural requirements of the Code of Civil Procedure 1908, including determination of preliminary issues of jurisdiction, limitation, maintainability, compliance with procedural formalities (payment of court fees, process fees, etc), disposal of applications, framing of issues, appointment commissions for the recording of evidence, supervising recording and

deposition of evidence and cross-examination, and passing orders, judgments or decrees.

Law stated - 07 April 2022

Limitation issues

What are the time limits for bringing civil claims?

The time limits for filing of all nature of civil claims in the concerned civil courts in all provinces of Pakistan and Islamabad Capital Territory are governed by the Limitation Act 1908 (the Limitation Act), which provides for various time limits for bringing different kinds of claims, ranging up to 12 years, with most civil claims having a limitation period of three to six years.

Statutorily prescribed time limits cannot be suspended or waived by mutual consent of the parties to a dispute and, subject to certain exceptions provided in the Limitation Act, every suit instituted after expiry of the period of limitation prescribed is required to be dismissed by the court.

In addition to the Limitation Act, some statutes also provide for special limitation periods to be applied in certain cases.

Law stated - 07 April 2022

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

No action is generally required to be taken before the filing of a suit of a civil nature in the courts. Some statutes, such as the Defamation Ordinance 2002, require a notice to be sent to the defendant prior to commencement of suit. Other statutes require notices to be sent to certain government bodies before a suit is instituted against them.

Law stated - 07 April 2022

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Civil proceedings are commenced with the presentation of a claim (plaint) in the relevant court of first instance in accordance with the procedural requirements of the Code of Civil Procedure 1908 and payment of the requisite court fees. Upon perusal of the plaint by the judge, or in some cases, a judicial officer, summons along with the claim documents are issued to be served on the defendants or respondents through prescribed modes of service for filing of a reply in response to the claim by a fixed date. Summons are ordinarily served by registered post and personal service; however, if service is unsuccessful, the court can order service by several means, including service by publication in a newspaper. To avoid delays occasioned by unsuccessful service, the aforesaid provisions of the Code of Civil Procedure 1908 have recently been amended in Punjab, the country's most populous province, Khyber Pakhtunkhwa and the Islamabad Capital Territory, to require summons to be served, in the first instance, simultaneously by registered post with acknowledgement, courier and by other methods that were previously available only for substituted service.

Many courts in Pakistan are currently facing a lack of capacity owing to an overwhelming number of pending cases, inadequate number of judges and leniency in granting adjournments. Civil courts are not equipped with the requisite digital technology and are dependent on labour-intensive manual methods of record-keeping, etc. There is vast room for improvement in the current setup for improving the capacity of civil courts to handle caseloads. The judiciary continues to grapple with the problem of a high number of pending cases.

Recent amendments in the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory have sought to impose strict timelines with the aim of reducing delays. Such amendments also include provisions to require courts to maintain electronic records of proceedings in suits.

Law stated - 07 April 2022

Timetable

What is the typical procedure and timetable for a civil claim?

All civil claims begin by the filing of a claim in the relevant court, following which the court will issue summons to the counterparty for filing of a reply (written statement) by a fixed date, not ordinarily exceeding 30 days.

If the claim is accompanied by an interlocutory application, that application is fixed before the court for order. At this stage, the court decides whether a notice of the application is to be issued to the opposing party and the court may pass a preliminary order on that application, such as an ad interim injunction. Thereafter, that application is fixed before the court for hearing. The notice of the application invites the opposing party to file a reply to such application by the hearing date. If a reply is filed, the claimant is ordinarily allowed an opportunity to file a rejoinder. Once the court is satisfied that it must proceed with the hearing of the application, it invites arguments from both sides and passes an order on the pending interlocutory applications.

Once a reply has been filed to the claim or the opposing party has been barred from filing a reply, the matter is fixed in court for settlement of issues. At that stage, the court settles issues in the case that are decided on the basis of the pleadings filed by the parties. Those issues are the various questions of law and fact that are required to be answered in the proceedings. Following the settlement of issues, the case is fixed for the recording of evidence. After the conclusion of evidence, the matter is fixed in court for arguments and both parties are invited to make oral submissions in court before the court gives judgment and decree on the matter.

Recent amendments to the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory seek to address delays that were encountered in suits where interlocutory applications had been filed; such suits would not proceed to evidence and subsequent stages until interlocutory applications were decided. The amendments require such cases to proceed before two different courts simultaneously, with one court hearing interlocutory applications and the other, the main suit, including evidence and final arguments.

Although the court and the procedural rules governing the matter will provide time periods for the various phases of the matter and fixed dates for filing of documents, it is uncommon for those procedural timelines to be strictly enforced. It is more common for parties to seek and be granted adjournments, as a result of which claims can take five or more years to conclude.

Law stated - 07 April 2022

Case management

Can the parties control the procedure and the timetable?

Ultimately, the timetable of a case is in the hands of the judge responsible for enforcing any requirements, including timelines mandated by law. However, the parties are able to make representations to the judge to shorten or extend timelines and judges are generally lenient when it comes to requests for adjournments.

Recent amendments to the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory have made provision for the respective high courts to make rules applicable to civil courts subordinate to them in connection with case management and scheduling conferences.

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no general obligation to preserve documents or other evidence pending trial. Discovery and inspection of documents is governed by Order XI of the Code of Civil Procedure 1908 and rules thereunder. Pursuant to Rule 14, the court may order the production by any party of documents in his or her possession or power relating to any matter in question in the proceedings. Every party to that proceeding is entitled to give notice to any other party to produce documents for the inspection of the party giving notice that are referred to in the party's pleadings or affidavits. An application to inspect documents other than those referred to in a party's pleading or affidavits or that are in its possession or power may be allowed by the court only if it is of the opinion that the document is necessary for disposing fairly of the suit or for saving costs. The Code of Civil Procedure 1908 provides for focused document production rather than US-style discovery.

Law stated - 07 April 2022

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Under articles 9 and 12 of the Qanun-e-Shahadat Order 1984 (being the relevant law governing evidence in Pakistan), an advocate's advice to a client and communications between an advocate and a client are privileged and their production in evidence cannot be compelled by a court. A person who is a full-time salaried employee cannot practice as an advocate; this privilege, therefore, will not apply to communications with in-house lawyers.

Law stated - 07 April 2022

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

Any documentary evidence that a party seeks to rely on must be submitted prior to trial along with the pleadings. However, parties are not required to exchange affidavits of witnesses and experts prior to the trial.

Law stated - 07 April 2022

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The law of evidence in Pakistan is codified in the Qanun-e-Shahadat Order 1984. Before trial, each party is required to file a list of witnesses and documents that they intend to present during the trial. The claimant has the right to begin the evidence, followed by the defendant.

The evidence of the witness of fact or an expert is given orally in the presence of the judge or a commission appointed by the court. The evidence of the witnesses is taken down in writing in a narrative form by or under the directions of the

judge or commission. In the recent amendments to the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory, provision has been made for evidence and the proceedings thereof to also be recorded by audio and video.

A witness is first examined-in-chief by the counsel of the party calling the witness. In some instances, evidence-in-chief is conducted by the witness reaffirming the contents of his or her affidavit in evidence in the presence of the court or the commission. In the recent amendments to the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory, provision has been made for the affidavit in evidence to be construed as the examination-in-chief. The witness is also asked to present documents filed in support of the affidavit in evidence. Following the examination-in-chief, the opposing counsel is invited to cross-examine the witness orally. Thereafter, the counsel of the party calling the witness may re-examine the witness.

Any documents sought to be relied on are presented by the relevant witness during the examination-in-chief and documents with which a presumption of truth is attached can be produced in evidence under a statement of the counsel of the party who wants to produce such documents as evidence.

Law stated - 07 April 2022

Interim remedies

What interim remedies are available?

Civil courts in Pakistan may grant a number of interim remedies, including:

- arrest;
- attachment before judgment;
- injunction;
- appointment of receiver; and
- inspections by court officer.

Remedies in the nature of Mareva injunctions and Anton Piller orders are rarely sought in Pakistani courts and may be granted in appropriate circumstances.

These interim remedies may also be granted in a suit seeking to enforce a foreign judgment.

Law stated - 07 April 2022

Remedies

What substantive remedies are available?

The civil courts in Pakistan are empowered to grant a host of substantive remedies, which are primarily set out in the Specific Relief Act 1877 and include:

- damages including interest but not including punitive damages;
- possession of movable or immovable property;
- specific performance of a contract;
- rectification of an instrument;
- rescission of a contract;
- cancellation of an instrument;

- declaration;
- prohibitory injunction;
- mandatory injunction; and
- recovery of money, including interest.

Law stated - 07 April 2022

Enforcement

What means of enforcement are available?

The means of enforcement of a courts order may be broadly divided into the formal means for executing an order and means by way of which a person can be punished for violating a court order.

The process of execution of orders essentially entails pursuing execution proceedings against the relevant part to seek orders forcing compliance with the court order. In execution proceedings, the court may order:

- delivery of any property;
- attachment and sale or by sale without attachment of any property;
- arrest and detention in prison;
- appointment of a receiver; or
- other directions that the nature of the relief granted may require.

If a person violates a court order, there are various provisions of law that empower the court to take steps to punish such violation and indirectly force compliance with the order.

If a person fails to comply with an interim injunction granted by a court, such court may order the property of such person to be attached and may order such person to be detained in prison for a term not exceeding six months. Further, the party that disobeys the order can be subjected to contempt proceedings before the relevant high court, where a finding of contempt can be punished with imprisonment, which may extend to six months, or with a fine, which may extend to 100,000 Pakistani rupees or with both.

In recent amendments to the Code of Civil Procedure 1908 in Punjab, on passing of an executable decree, proceedings in the suit are automatically converted to execution proceedings, without the party to whom relief has been granted having to file separate proceedings for this purpose.

Law stated - 07 April 2022

Public access

Are court hearings held in public? Are court documents available to the public?

Yes, ordinarily all court hearings are held in public.

Court documents are available to the public for inspection and copies may be obtained for a nominal fee.

Law stated - 07 April 2022

Costs

Does the court have power to order costs?

The court has the power to grant costs calculated on the basis of actual costs incurred, subject to limits, which may vary between 25,000 and 100,000 Pakistani rupees. Unlike many other jurisdictions, claimants are not required to provide security for the opposing party's costs. The court has the power to require the claimant to provide security for the costs of the defendant in limited circumstances, including where the plaintiff resides outside Pakistan and does not possess sufficient immovable property in Pakistan.

Ordinarily, when awarded, costs are limited to amounts paid by way of court fees.

Law stated - 07 April 2022

Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency or conditional fee arrangements are not permissible in Pakistan. There are no express rules in relation to using third-party funding and the practice is uncommon. In the absence of rules, the parties are free to make contractual commitments in respect of the funding of litigation and the distribution of any proceeds.

Law stated - 07 April 2022

Insurance

Is insurance available to cover all or part of a party's legal costs?

Insurance policies for legal costs are not available in Pakistan. However, legal costs may be covered by other policies such as third-party liability, which are available.

Law stated - 07 April 2022

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Litigants may bring a suit jointly if their right to sue arises out of the same transaction or series of acts or transactions, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise. Further, parties may with the permission of the court sue on behalf of or for the benefit of all persons interested. In those cases, notice is required to be given to all persons of that action. While the bringing of a representative action is allowed, it is uncommon in practice. It is more common for litigants to invoke the constitutional jurisdiction of the High Court or Supreme Court to seek writ remedies or directions for enforcement of fundamental rights against the state or any instrumentality thereof. Those actions usually take the form of public interest litigation.

Law stated - 07 April 2022

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Under the procedural laws of Pakistan, there are multiple appellate remedies that can be availed by an aggrieved litigant, including appeal, reference, review and revision. The remedy of appeal is not restricted to any particular grounds and parties who are dissatisfied with a judgment and decree of a court of first instance have the right to file an appeal before the relevant appellate forum.

In most cases, the parties are entitled to make a further appeal and may have remedies against that further appellate order. Even in cases where the parties do not have a further right of appeal, they can still challenge appellate decisions, on certain limited grounds, by invoking the constitutional jurisdiction of the high courts.

Law stated - 07 April 2022

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Decrees passed by the superior courts in certain reciprocating territories notified by the government of Pakistan may be executed in Pakistan as if they had been passed by a district court. Reciprocating territories include the United Kingdom, Fiji, Singapore, Australia, New Zealand, Kuwait, Turkey and the United Arab Emirates. A certified copy of the decree is required to be filed with the execution application in the district court where the decree is required to be enforced.

If a foreign decree sought to be enforced is not passed by a superior court of one of the above-mentioned jurisdictions, the decree holder will have to initiate a fresh suit in Pakistan on the basis of the foreign decree.

Law stated - 07 April 2022

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

This requires that a certificate, signed by the consular officer of the foreign country of the highest rank in Pakistan, is sent to the high court in whose appellate territorial jurisdiction the witness resides through the federal government; a letter of request issued by the foreign court be sent to the high court through the federal government; or a letter of request issued by the foreign court be produced before the said high court by a party to the proceeding. The high court shall issue a commission for examination of the witness if satisfied from above said certificate or letter of request that:

- the foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it;
- the proceedings are of civil nature; and
- the witness is residing within the limits of the high court's appellate jurisdiction.

When the commission has duly executed its duty, its report shall be returned together with the evidence taken to the high court, which shall forward it to the federal government along with the letter of request for transmission to the

foreign court.

Law stated - 07 April 2022

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

There are two major statutory instruments that govern arbitration in Pakistan: the Arbitration Act 1940 (the 1940 Act), which applies to local arbitrations, and the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 (the 2011 Act), which applies to foreign arbitrations. Neither of these are based on the UNCITRAL Model Law.

The 1940 Act is applicable to all local arbitration and provides for three approaches to arbitration: without the intervention of the court; with the intervention of the court; and with the intervention of the court but where a suit is pending between the parties and they agree for the resolution of their disputes through arbitration, keeping the suit pending, and that the fate thereof (suit) be decided on the basis of the decision rendered by the arbitrator.

The 2011 Act has been enacted to implement the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, or New York Convention, which Pakistan has ratified.

While the 1940 Act comprehensively deals with various aspects of local arbitration, including the appointment of arbitrators, the conduct of the arbitration and the powers of the court to interfere with the arbitration, the 2011 Act only seeks to enforce the New York Convention and does not address matters beyond the scope of the convention. As such, unless it is expressly provided otherwise, the answers given below have been given in relation to local arbitrations, whereas the law on such matters should be considered to be silent in respect of foreign arbitrations.

Law stated - 07 April 2022

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

With respect to local arbitrations, a valid arbitration agreement must be an agreement in writing, reflecting the intention of parties to refer the dispute to arbitration, with or without a named arbitrator.

As for foreign arbitration agreements, the 2011 Act refers to the definition in the New York Convention. Article II of the Convention defines 'arbitration agreement' as an agreement in writing under which the parties undertake to submit to arbitration all of any differences that have arisen or that may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. Article II(3) further states that the term 'agreement in writing' must include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

Law stated - 07 April 2022

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Ordinarily, parties have a right to agree on the arbitrator or arbitrators of their choice and the manner in which the arbitrator or arbitrators will be appointed. However, if the arbitration agreement is silent on the number of arbitrators to be appointed, the reference shall be presumed to have been intended to be made to a sole arbitrator to be appointed by the consent of both parties.

Either party may serve notice to the other party for appointment of an arbitrator. In the case of non-appointment within 15 days of the service of that notice to concur in appointment, the party can file an application to the court to appoint an arbitrator after hearing both the parties. The court then has exclusive jurisdiction to make such appointment if approached by either party.

Where an arbitrator is appointed in contradiction with the arbitration agreement and the parties participate in the said proceedings without objection, subsequent objection to the arbitrators' jurisdiction is disallowed ostensibly on the principle of waiver. However, the Supreme Court has held that this principle is not applicable when the appointment of the arbitrator is in contravention with the provisions of law.

Law stated - 07 April 2022

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

No restrictions have been imposed on the parties with regard to the choice of arbitrators in Pakistani law. The parties are free to agree upon arbitrators of their choice. The Supreme Court has held that the parties may even agree to name an authority or person from among their own officers or officials, and this would not render that arbitration agreement illegal or against public policy.

Law stated - 07 April 2022

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act 1940 does not provide for any specific procedure to be followed in the course of arbitration proceedings. The parties are relatively free to agree upon any procedure or choose to adopt that of a particular arbitral institution.

The only procedure that the Arbitration Act 1940 provides for is when approaching the courts (for referral to arbitration, appointment of arbitrator, obtaining interim relief, enforcement of awards, etc). In that case, section 41 of the Arbitration Act 1940 clearly states that the provisions of the Code of Civil Procedure 1908 will apply.

Law stated - 07 April 2022

Court intervention

On what grounds can the court intervene during an arbitration?

The court has extensive powers to intervene in local arbitrations. Where the parties fail to consent to the appointment of an arbitrator as required, the arbitrator fails or is incapable of acting, or where arbitrators fail to appoint an umpire, the court has the power to appoint arbitrators or umpires. The court also has the authority to remove arbitrators or umpires where they fail to act reasonably in proceeding with the arbitration or misconduct themselves. The court also enjoys discretionary powers to revoke the authority of an arbitrator in cases where it sees fit to do so. Following the award, the court, in certain circumstances, has the power to modify or set aside the award or supersede the arbitration.

Interim relief**Do arbitrators have powers to grant interim relief?**

Unless otherwise restricted by the arbitration agreement, arbitrators have the power to grant interim relief. However, in practice, owing to the difficulty of enforcing interim relief granted by arbitrators, parties prefer to approach the courts for grant of interim relief.

Law stated - 07 April 2022

Award**When and in what form must the award be delivered?**

The award must be delivered by the time frame as provided in the arbitration agreement. If no time frame is provided, then by law it is an implied term of the arbitration that the arbitrators are required to make their award within four months of entering on the reference or of having been called upon to act by notice in writing from any party to the arbitration agreement, or within such extended time as the court may allow. Unless otherwise provided in the arbitration agreement, the award is not required to be in any particular form except that it is required to be signed by the arbitrator or arbitrators.

Law stated - 07 April 2022

Appeal**On what grounds can an award be appealed to the court?**

The award can be wholly or partially set aside by the court on the grounds that:

- there has been misconduct involving the arbitrator or umpire or the proceedings;
- the award has been made after an order of the court superseding the arbitration or declaring it invalid; or
- the award has been improperly procured or is otherwise invalid

The order of the court in this regard may be further appealed.

Law stated - 07 April 2022

Enforcement**What procedures exist for enforcement of foreign and domestic awards?**

In the case of a foreign award, the 2011 Act provides that the person seeking enforcement must file an application for recognition and enforcement before the relevant high court. That application may only be refused on the grounds stated in article V of the New York Convention. The 2011 Act does not prescribe any procedure for such application. There have been few instances of such enforcement proceedings in Pakistan and therefore, the courts have had limited opportunities to deliberate on this procedure. The practice that has been informally adopted is to file an application before the high court seeking recognition of the award and for the court to issue a decree in terms of the award. That

decree may then be executed as any other decree of the court.

In the case of a domestic award, the arbitral tribunal must give notice to the parties when the award is made. If requested by the parties or directed by the court, the arbitral tribunal must file the award in court. After the award is filed in court, if an application to set aside the award is not filed in the required time or the application is filed and refused, the court pronounces judgment in terms of the award, after which a decree is passed.

Law stated - 07 April 2022

Costs

Can a successful party recover its costs?

Unless otherwise provided in the arbitration agreement, it is an implied term of every domestic arbitration agreement that the arbitrator has the discretion to award costs of the reference to arbitration, including legal fees.

Law stated - 07 April 2022

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Arbitration is the only formal ADR process to be commonly used in Pakistan. Recently, laws have been introduced across Pakistan to encourage other alternate methods of dispute resolution including mediation and conciliation. There are various informal adjudicatory practices derived from custom that are used in some rural areas in Pakistan.

Law stated - 07 April 2022

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Recently there have been many legislative changes in Pakistan encouraging the resolution of dispute by way of alternate dispute resolution (ADR) including arbitration, mediation and conciliation.

Sindh enacted the Code of Civil Procedure (Sindh Amendment) Act 2018, whereby it introduced certain amendment in the Code of Civil Procedure 1908 (CPC) as applicable in Sindh. Pursuant to such changes, the courts in Sindh have been given the power to mandatorily refer parties to any form of ADR.

Punjab enacted the Punjab Alternate Dispute Resolution Act 2019, and the Lahore High Court made certain amendments to the First Schedule of the CPC as applicable in Punjab. Under the Act, the courts are required to refer to ADR the disputes listed in Schedule 1 of the Act, whereas the courts have been empowered to refer to ADR disputes listed in Schedule 2. The Act contemplates a resumption in litigation if ADR fails. Pursuant to the changes in the CPC, courts hearing civil suits are required to refer the dispute for mediation except where the court is satisfied that the case involves an intricate question of law or fact or that there is no possibility of successful mediation. When referring a case for mediation, the court may specify the material issues for determination through mediation. When a case is so referred, its proceedings in court are stayed for a period not exceeding 30 days, and the parties are directed to the Mediation Centre established by the Lahore High Court.

The Alternate Dispute Resolution Act 2017 was enacted in Islamabad along with changes in the CPC. Under this Act,

where the court is satisfied that a scheduled dispute can be resolved by ADR and it does not involve an intricate question of law, the court may refer the dispute to ADR. In this case, the court requires the consent of the parties to refer the matter to ADR.

Khyber Pakhtunkhwa enacted the Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020. This Act applies in the same manner as the Alternate Dispute Resolution Act 2017, discussed above.

Balochistan is yet to introduce any legislation empowering courts to refer matters to ADR.

This legislative reform is fairly recent and it remains to be seen whether it will be implemented in practice.

Law stated - 07 April 2022

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Judges in Pakistan often act in multiple capacities. Although separate legal systems may have a specific set of categories of proceedings, various kinds of proceedings will often be brought before the same judge. The most prominent example of this is that ordinary civil courts also exercise criminal jurisdiction, with civil judges also holding the charge of magistrates and district judges and additional district judges also holding the charge of sessions judges and additional sessions judges.

Law stated - 07 April 2022

UPDATE AND TRENDS

Recent developments

Are there any proposals for dispute resolution reform? When will any reforms take effect?

Currently, there are no significant proposals for dispute resolution reform.

Law stated - 07 April 2022

Jurisdictions

	Australia	Clayton Utz
	Austria	OBLIN Attorneys at Law
	Belgium	White & Case LLP
	Cayman Islands	Campbells
	China	Buren NV
	Cyprus	AG Erotocritou LLC
	Denmark	Lund Elmer Sandager
	Ecuador	Paz Horowitz
	Egypt	Soliman, Hashish & Partners
	Germany	Martens Rechtsanwälte
	Greece	Bernitsas Law
	Hong Kong	Hill Dickinson LLP
	India	Cyril Amarchand Mangaldas
	Indonesia	SSEK Legal Consultants
	Israel	Lipa Meir & Co
	Japan	Anderson Mōri & Tomotsune
	Liechtenstein	Marxer & Partner Rechtsanwälte
	Luxembourg	Baker McKenzie
	Malaysia	SKRINE
	Malta	MAMO TCV Advocates
	Pakistan	RIAA Barker Gillette
	Panama	Patton Moreno & Asvat
	Philippines	Ocampo, Manalo, Valdez & Lim Law Firm
	Romania	Zamfirescu Racoți Vasile & Partners
	Russia	Morgan, Lewis & Bockius LLP

	South Korea	Jipyong
	Switzerland	Wenger Vieli Ltd
	Thailand	Pisut & Partners
	United Arab Emirates	Kennedys Law LLP
	United Kingdom - England & Wales	Latham & Watkins LLP
	USA - California	Ervin Cohen & Jessup LLP
	USA - New York	Dewey Pegno & Kramarsky LLP