

RIAA Barker Gillette secures favourable ICC arbitration award on jurisdiction for major Pakistani oil & gas exploration and production company

RIAA Barker Gillette secures favorable ICC arbitration award on jurisdiction for Pakistani oil and gas company. The award highlights the importance of clarity in dispute resolution provisions.



ICC Arbitration Victory for Pakistani Oil & Gas E&P Company

RIAA
Barker
Gillette

In an ICC arbitration dispute with a Bermuda-based claimant, we recently achieved a significant victory for our client, a leading Pakistani oil and gas exploration and production company. The tribunal ruled in favour of our client, finding that it lacked jurisdiction over the dispute under Pakistani law.

Our client had entered into Petroleum Concession Agreements (PCAs) with the Government of Pakistan and Joint Operating Agreements (JOAs) with the claimant for oil and gas exploration and production in Pakistan. The claimant initiated ICC arbitration proceedings against our client over alleged non-compliance with the JOAs.

We argued that the tribunal lacked jurisdiction because the arbitration agreement in the JOAs did not cover disputes between Pakistani and foreign working interest owners. We contended that Pakistani law governed the arbitration agreement and that under Pakistani law, the dispute should be resolved through Pakistani domestic *fora*. The provision for ICSID and ICC arbitration applies to claims between the Government and foreign parties *inter se*.

A key issue in the case was determining the proper law governing the arbitration agreement. We asserted that Pakistani law should govern the arbitration proceedings, as neither the PCAs nor the JOAs explicitly stipulated the proper law of arbitration agreement. The ICC had designated Singapore as the "seat" of arbitration and the "venue" where hearings took place in London. We argued that in terms of Pakistan law and Singapore law, the choice of law governing the main contract should also apply to the arbitration agreement in the absence of any indication to the contrary in the contract.

The tribunal agreed with our arguments, holding that Pakistani law was the proper law governing the arbitration agreement. It found that the JOAs did not provide for international arbitration of disputes between Pakistani and foreign working interest owners.

In reaching its decision, the tribunal considered the three-step test outlined in the English Court of Appeal's judgment in *Sulamérica Cia Nacional De Seguros S.A. and others v. Enesa Engenharia S.A. and others* [2012] EWHC 42 (Comm); [2012] EWCA Civ 638. We argued that this test supported the application of Pakistani law, as there was no express choice of law, and Pakistani law was the implied choice given its status as the governing law of the PCAs and JOAs.

The tribunal also relied on the Singaporean cases of *BCY v. BCZ* [2016] SGHC 249 and *BNA v. BNB* [2019] SGCA 84, which held that choosing a different *lex arbitri* from the governing law is insufficient to outweigh the presumption favouring the latter as the proper law of the arbitration agreement.

Yousaf Khosa, the Partner, who led the firm's team on this matter, commented:

"This award is a testament to our firm's expertise in complex, multi-jurisdictional disputes in the oil and gas sector. It reinforces the importance of carefully drafting dispute resolution clauses."

The award has significant implications for the oil and gas industry, particularly for foreign companies operating in Pakistan. It highlights the need for clarity in dispute resolution provisions and the interplay between PCAs and JOAs.

Our team was led by Pakistan Partner Yousaf Khosa and included Junior Associate Zubair Nasar. This success demonstrates our firm's capability to handle high-stakes international arbitrations and our deep understanding of the energy sector.

Please contact Yousaf Khosa if you require assistance with complex disputes in the petroleum sector.

This article is not legal advice; it provides information of general interest about current legal issues.

More News/Insight

By expertise By year
By type Search

Links

- Download page as PDF
- Send link to PDF
- Share link

Contacts

Yousaf Khosa

+92 (51) 2806321-2
+92 (300) 8561856

Full profile



Email

Download V.card

The firm practices in all areas of corporate, commercial and dispute resolution law. Leading international legal directories consistently recognize the firm as a top-tier law firm in Pakistan.

LexMundi Member

RIAA Barker Gillette is the exclusive member firm in Pakistan for Lex Mundi, the world's leading network of independent law firms with in-depth experience in over 125 countries worldwide.

Stay in touch

Subscribe to our newsletter

Name *

Email *

[Submit](#)

News/Insight

Landmark arbitration victory for Star Hydro Power against Government of Pakistan

In a major victory for

[Read more](#)

• • • • •

What clients say...

The Legal 500 2022

"RIAA has an excellent litigation practice that advises on the full range of contentious issues as well as international arbitrations. The practice regularly handles all forms of civil, commercial, corporate, regulatory and white-collar crime matters before all the courts in Pakistan. It has extensive experience in a diverse range of industry sectors ..." – **The Legal 500 2022**

• • • • •

[Read more](#)

Our practices

Banking and finance
Capital markets
Commercial
Corporate and M&A
Dispute resolution
Employment, labour and benefits
Projects and infrastructure
Property and real estate
Trade remedies and international trade

Our industries

Clean energy
e-Commerce and retail
Financial services
Mining and minerals
Oil and gas
Pharmaceutical, healthcare and life sciences
Power
Real estate and construction
Technology, media and communications

Quick links

About us
Alliance
Contact
Legal Notice
Lex Mundi
News/Insight
Our expertise
Site search

Around the world

Pakistan
United Arab Emirates
United Kingdom



LexMundi
Member

© Copyright 2024 RIAA Barker Gillette Legal notice

Call us now ▾

