

Dispute Resolution 2021

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Dispute Resolution 2021

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Lexology Getting The Deal Through is delighted to publish the nineteenth edition of *Dispute Resolution*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Israel, New York, Slovenia and Ukraine.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Martin Davies and Alanna Andrew of Latham & Watkins LLP, for their continued assistance with this volume.



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Pakistan

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LITIGATION

Court system

1 | 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 15 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.

Judges and juries

2 | 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.

Limitation issues

3 | 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 have 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.

Pre-action behaviour

4 | 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.

Starting proceedings

- 5 | 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.

Timetable

- 6 | 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.

Case management

- 7 | 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

- 8 | 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.

Evidence – privilege

- 9 | 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.

Evidence – pretrial

10 | 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.

Evidence – trial

11 | 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.

Interim remedies

12 | 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.

Remedies

13 | 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.

Enforcement

14 | What means of enforcement are available?

The means of enforcement of a court's 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 party 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.

In the case that 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 6 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.

Public access

15 | 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.

Costs

16 | 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.

Funding arrangements

17 | 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.

Insurance

18 | 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.

Class action

19 | 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.

Appeal

20 | 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.

Foreign judgments

21 | 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 abovementioned jurisdictions, the decree holder will have to initiate a fresh suit in Pakistan on the basis of the foreign decree.

Foreign proceedings

22 | 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.

ARBITRATION

UNCITRAL Model Law

23 | 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.

Arbitration agreements

24 | 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.

Choice of arbitrator

25 | 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.

Arbitrator options

26 | 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.

Arbitral procedure

27 | 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.

Court intervention

28 | 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

29 | 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.

Award

30 | 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 after entering the reference, after 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.

Appeal

31 | 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.

Enforcement

32 | 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.

Costs

33 | 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.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 | 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.

Requirements for ADR

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

Punjab has enacted the Punjab Alternate Dispute Resolution Act, 2019 and the Lahore High Court has 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 where as the Court have been empowered to refer

to ADR disputes listed in Schedule 2. It is note that the Act contemplates a resumption in litigation in the event 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 has been enacted for Islamabad along with changes in the CPC as applicable in Islamabad. under this Act where the court is satisfied that a scheduled dispute can be resolved by ADR and that it does not involve an intricate question of law, the court may refer the dispute to ADR. It is noted that in this case the court requires the consent of the parties to refer the matter to ADR.

Khyber Pakhtunkhwa has enacted the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020. Such 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.

It is note that this legislative reform is very recent and it remains to be seen whether it will be implemented in practice.

MISCELLANEOUS

Interesting features

36 | 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 been set of categories of proceedings, often various kinds of proceedings will 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.

UPDATE AND TRENDS

Recent developments

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

With the object of reducing delays that commonly afflicted various stages of civil proceedings, the Code of Civil Procedure 1908 was amended in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory during 2020. The most far-reaching and elaborate amendments have been made in Punjab. The efficacy of these measures will depend on the extent to which they are enforced by judges. Meaningful change will only come about if the culture of leniency towards requests for adjournment is addressed by judges with adverse directions, including cost orders. In 2019, the Supreme Court introduced the initiative of establishing model courts in every district of Pakistan for expeditious disposal of cases. The model courts conduct criminal and civil trials daily, use technology and do not accept routine requests for adjournment.

During 2020, with the aim of improving the ease of doing business, and in particular enforcement of contracts, the Lahore High Court established commercial courts in five districts of Punjab: Rawalpindi, Faisalabad, Lahore, Multan and Gujranwala. The object of such courts is to decide commercial disputes within one year and there are plans to establish such courts in other districts in Punjab.

The Supreme Court in 2019 established video link facilities to connect its branch registries in provincial capitals with the principal seat in Islamabad. In late 2020, during the covid-19 pandemic, as a one-off measure, the Supreme Court conducted a hearing entirely remotely, with senior counsel attending a hearing from home using video links. There are plans to implement e-court systems across the board in the Supreme Court, enabling counsel to attend hearings from their homes and offices.

During the first wave of the pandemic, most courts in Pakistan suspended regular work and heard only urgent cases. The Islamabad High Court instituted an e-court procedure whereby counsel can apply to attend hearings at the High Court or its subordinate district courts on Skype. Certain benches of the Lahore High Court have allowed counsel to attend hearings remotely and there are plans to immediately expand this facility to all benches of the High Court. Other High Courts are yet to establish such facilities for themselves or their subordinate courts.

Coronavirus

38 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In 2020, in response to the lockdown during the first wave of the pandemic, the government of Pakistan announced a 1.2 trillion Pakistani rupees economic relief package. Of this, 150 billion Pakistani rupees was allotted for low-income groups, and 280 billion Pakistani rupees allocated for wheat procurement. Loan interest payments for exporters were deferred temporarily, while a package of 100 billion rupees Pakistani was provided to support small industries and the agriculture sector.

The State Bank of Pakistan (SBP), the central bank, between May and June 2020, reduced the interest rate from 13.25 per cent to 7.00 per cent. The SBP directed banks to deferment of principal or rescheduling and restructuring of financing facilities across the industrial, housing and agricultural sectors. The SBP also introduced a Temporary Economic Refinance Facility scheme to provide concessionary refinance for setting up of new industrial units, which may be obtained from banks.

The government also enacted legislation to accelerate investment in the construction sector. The legislation grants immunity from audit regarding the source of investment, subject to the fulfilment of certain conditions, and offers several time-bound tax relief measures for builders and developers.

During 2020, Pakistan's startup ecosystem has witnessed a boom, with e-commerce and fintech (largely payment systems) markets growing significantly. This trend is expected to continue, given Pakistan's young population, wide smartphone penetration and growing middle class.

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