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IBA ARBITRATION COMMITTEE

Arbitration Guide

PAKISTAN

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

In Pakistan, arbitration is increasingly being recognised and utilised as an effective method of resolving disputes, particularly in the realms of commercial, construction and international business. This shift towards arbitration is driven by the business community's need for faster and more specialised dispute resolution mechanisms compared to the traditional court system. Although the use of arbitration is on the rise, it is still evolving and not as prevalent as in more established jurisdictions.

One of the main advantages of arbitration in Pakistan is the ability for parties to choose arbitrators who possess specific expertise relevant to their dispute. Additionally, arbitration offers procedural flexibility, allowing parties to tailor the process to their specific needs, which can include simplifying procedures and avoiding the stringent technical rules in the Evidence Act, 1872 (replaced by *Qanun-e-Shahadat* Order 1984 (Order No. X of 1984) ('*Qanun-e-Shahadat*')) and the Code of Civil Procedure, 1908 (Act No. V of 1908) ('CPC') that characterise court litigation. Furthermore, arbitration provides the convenience of choosing a suitable venue for the proceedings, which can be more accessible and agreeable to all parties involved.

However, arbitration in Pakistan also faces several significant disadvantages. There is a notable shortage of experienced and specialist arbitrators, which can affect the quality of the arbitration process. Judicial delays in challenges to arbitrators, their appointments, or replacements can further complicate and prolong proceedings. Unlike courts, arbitrators lack the power to issue interim provisional measures, which can be a critical limitation in some disputes. Additionally, many lawyers in Pakistan are not adequately trained in arbitration and tend to conduct arbitration proceedings similarly to court litigation, undermining the efficiency benefits. The legislative framework also lacks sufficient provisions for the joinder of parties, consolidation of cases and expedited procedures for small claims, further limiting the effectiveness and appeal of arbitration as a dispute resolution mechanism in Pakistan.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most domestic arbitrations in Pakistan are ad hoc. There are a few domestic arbitral centres in Pakistan. Amongst are the Center for International Investment and Commercial Arbitration (CIICA) based in Lahore, the International Centre for Appropriate Dispute Resolution and Prevention (ICADRP) based in Islamabad and the *Musaliha* International Center for Arbitration & Dispute Resolution (MICADR) and National Center for Dispute Resolution (NCDR) based in Karachi. Foreign investors and the government often prefer the London Court of International Arbitration (LCIA) with London as the seat of arbitration or the Court of Arbitration of the International Chamber of Commerce (ICC) with Paris as the seat for commercial disputes. For investment disputes, most of the Bilateral Investment Agreements (BITs) to which Pakistan is a party provide for either the International Centre for Settlement of Investment Disputes (ICSID) arbitration or ad hoc arbitration governed by the UNCITRAL Rules of Arbitration administered by the Permanent Court of Arbitration (PCA). Singapore seated arbitration administered by the Singapore International Arbitration Centre (SIAC) is often chosen in finance documents financed by Chinese banks for infrastructure projects under the China-Pakistan Economic Corridor (CPEC) framework. Dubai International Arbitration Centre (DIAC) is another choice for local business transactions due to its proximity and Pakistan's close ties with the Middle East.

(iii) What types of disputes are typically arbitrated?

In Pakistan, a diverse array of corporate and commercial disputes is typically resolved through arbitration. This includes disputes arising from government-approved model form agreements and those mandated by professional bodies. Commonly arbitrated disputes encompass issues related to distribution and franchising agreements, construction and engineering projects, joint ventures, shareholder, partnerships, mergers and acquisitions, concession agreements and contracts for the sale of goods and services.

(iv) How long do arbitral proceedings usually last in your country?

If the reference has been made through the court, the award should be made within the time fixed by the court. In references without court intervention, if the arbitration agreement specifies a time within which the award should be rendered, the arbitrators must make the award within that time. If no time is specified by the parties, the default period for making the award is four months from when the arbitrators begin the reference (by taking an action referable to their position as arbitrators, such as holding a meeting or giving directions to the parties about the progression of the proceedings) or when called upon to act by notice. This default period may be extended by the court or by agreement of the parties.

In practice, once the tribunal is formally constituted, the duration of the arbitral proceedings typically ranges from one to three years, depending on the complexity of the dispute and the number of witnesses involved at the hearing. However, the process may be prolonged if disrupted by interim relief requests or challenges to any arbitrator in the local court.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There are no statutory restrictions on foreign nationals acting as counsel or arbitrators in arbitration proceedings.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

In *Societe Generale De Surveillance S.A. v. Pakistan through Secretary, Ministry of Finance Revenue Division, Islamabad*, [2002] SCMR 1694, the Supreme Court held that since the seat of arbitration was Islamabad (Pakistan), part performance of the agreement was to be made in Pakistan and the agreement was executed in Pakistan, these factors were sufficient to determine that the governing law of the arbitration would be the law of Pakistan.

Pakistan has not implemented the UNCITRAL Model Law on International Commercial Arbitration. The Arbitration Act, 1940 (Act No. X of 1940) ('the 1940 Act'), which came into force on 1 July 1940 and extends to the whole of Pakistan, governs all arbitrations and arbitration proceedings. The 1940 Act does not differentiate between domestic and international arbitrations. It provides for three classes of arbitration: (i) arbitration without court intervention (Chapter II, sections 3-19), (ii) arbitration where no suit is pending but is conducted through the court (Chapter III, section 20) and (iii) arbitration in suits (Chapter IV, sections 21-25). The 1940 Act also includes provisions common to all three types of arbitration (Chapter V, sections 26-38).

Pakistan enacted the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 (Act No. XVII of 2011) ('the 2011 Act') to give domestic effect to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) ('the New York Convention').

Additionally, the Alternative Dispute Resolution Act of 2017 ('2017 Act') provides for various alternate dispute resolution ('ADR') mechanisms such as arbitration, mediation, conciliation, and expert evaluation. The 2017 Act allows for both court-annexed and private ADR, enabling referral to ADR before or after legal proceedings or through the courts. Notwithstanding anything contained in the 1940 Act, the 2017 Act applies to arbitration with necessary adjustments. In cases of inconsistency between the provisions of the 1940 Act and the 2017 Act, the latter prevails. The federal government implemented the Alternative Dispute Resolution Rules of 2018 ('2018 Rules') framed under section 25 of the 2017 Act, outlining the ADR procedure.

In addition to federal laws, provincial statutes and rules also address mediation, conciliation, and evaluation:

- The *Sindh* Amendment to the Code of Civil Procedure Act of 2018 ('the Sindh Act 2018');
- The *Khyber Pakhtunkhwa* Alternate Dispute Resolution Act of 2020 ('the KPK Act');

- The *Khyber Pakhtunkhwa* Alternate Dispute Resolution Rules of 2021 ('the KPK Rules');
- The *Punjab* Alternate Dispute Resolution Act of 2019 ('the Punjab Act');
- The *Punjab* Alternate Dispute Resolution Rules of 2020 ('the Punjab Rules');
- The *Balochistan* Alternate Dispute Resolution Act of 2022 ('the Balochistan Act').

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The 1940 Act does not differentiate between domestic and international arbitrations. However, when considering a stay of the suit in favour of arbitration, the provisions of the 1940 Act apply to domestic arbitration with a discretionary stay of the suit while the provisions of the 2011 Act apply to arbitration agreements providing for international arbitrations with the mandatory stay of suits. In *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd*., 2024 SCMR 640, the Supreme Court held that Section 1(3) of the 2011 Act has a retroactive effect, so arbitration agreements with a foreign seat executed before 14 July 2005 must be given effect under s. 4 of the 2011 Act by stay of suit. Section 34 of the 1940 Act is inapplicable in such cases.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Before independence, British India signed the Geneva Protocol of 1923 and the Geneva Convention of 1927. These instruments were given domestic law effect by the Indian legislature in 1937 by promulgating the Arbitration (Protocol and Convention) Act 1937 ('1937 Act'). The 1937 Act governed matters pertinent to international arbitration in Pakistan until the enactment of the 2011 Act which repealed the 1937 Act and incorporated the New York Convention into the domestic law of Pakistan.

Pakistan has also signed and ratified the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington, 18 March 1965) ('Washington Convention') **and the Parliament has enacted the Arbitration (International Investment Disputes) Act 2011 (Act No. of 2011)** ('the ICSID Act 2011') **to give domestic law effect to the Washington Convention.**

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The 1940 Act does not provide any guidance to the arbitral tribunal as to which substantive law to apply to the merits of the dispute. In *the Central Bank of India Ltd v. Muhammad Islam Khan,* PLD 1962 SC 251, the Supreme Court held that the proper law of the contract is the law with which the contract has the closest connection having regard to the terms of the contract and its surrounding circumstances. The arbitral tribunal would generally be guided by the common law conflict of law approach to determine the substantive law to apply to the merits of the dispute.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

Section 2(a) of the 1940 Act defines an arbitration agreement as 'an agreement in writing to submit present or future differences to arbitration, whether an arbitrator is named therein or not.' An arbitration agreement, like any other agreement, must be valid under general contract law (See, *Karachi Dock Labour Board v. Quality Builders Ltd*, PLD 2016 SC 121). Therefore, the arbitration agreement must be entered into with the free consent of parties capable of entering

into agreements. The terms of the agreement must not be too vague or uncertain to be made certain (See, *Mrs. Yasmeen v. Beach Developers*, [2003] YLR 1109). The Islamabad High Court in *Syed Munir Syed v. Sardar Muhammad Kamal Khan*, [2019] YLR 209, held that the arbitration agreement must be in writing, though it is not required to be signed, and may be contained in one or more documents. In *Louis Dreyfus Commodities Suisse SA v Acro Textile Mills Ltd*, PLD 2018 Lahore 597, the Lahore High Court held that modern forms of communication, such as email and telefax, fell within the scope of the term 'agreement in writing'. An arbitration agreement may be accepted by conduct during written correspondence between the parties. An originally oral arbitration agreement, subsequently confirmed in writing, was held to be valid in *Habib & Sons v. Virk Co*, PLD 1957 Karachi 245.

In the case of a dispute over the existence of an arbitration agreement, the objective intention of the parties to enter into such an agreement must be ascertained. In *The Imperial Electric Company (Pvt) Limited v. Zhongxing Telecom Pakistan (Pvt) Limited*, [2019] CLD 609, the Islamabad High Court held that the intention of the parties must be gathered from the language used in the written agreement. The court must satisfy itself that the parties intended to resolve the dispute through arbitration, i.e., through a person who, after conducting an inquiry, will give a decision binding on them, even if the clause does not contain terms such as 'arbitration', 'arbitrator', or 'arbitration agreement'.

In *Sh. Muhammad Saleem v. Saadat Enterprises*, [2009] CLD 390, the Lahore High Court held that when an arbitration agreement on behalf of a company is signed by a person not authorised through a resolution of the Board of Directors, such a person cannot refer the dispute to arbitration on behalf of the company. Participation of such a person in arbitration proceedings would not validate the proceedings.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Under section 34 of the 1940 Act, a party to an arbitration agreement or any person claiming under him (such as a successor, assignee or representative-in-interest) who is a party in a suit filed by a party to that arbitration agreement or person claiming under him in respect of a matter covered by such agreement may request the court to stay the proceedings before the defendant takes any substantive steps in the proceedings (eg seeking adjournment to file a written statement).

The court may make an order staying the proceedings, if it is satisfied that

- there is no sufficient cause as to why the matter should not be referred to arbitration pursuant to the arbitration agreement, and
- that the applicant was at the time when the proceedings were commenced and continues to remain ready and willing to do all things necessary to the proper conduct of the arbitration.

Even if all the conditions are satisfied, the court shall consider if there exists any sufficient reason for not referring the matter to arbitration. The stay is not mandatory and is subject to judicial discretion. Stay is refused where the court finds the arbitration agreement to be vague or uncertain or reference to arbitration may result in failure of justice or extreme inconvenience or hardship. In *Akbar Cotton Mills Ltd. v. VES/OJUANOJO Objedinenije Tech/Amesh Export and another*, [1984] CLC 1605, it was held that the availability of voluminous evidence in Karachi along with the involvement of foreign exchange restrictions, residence of defendant and his business in Karachi had made the conduct of Moscow arbitration impracticable and impossible.

The 1940 Act does not apply to an agreement involving foreign arbitration. The 2011 Act provides for a mandatory stay of the suit where the agreement of the parties provides for international arbitration. In *Metropolitan Steel Corporation Ltd. v. Macsteel International Ltd*, PLD 2006 Karachi 664, the Sindh High Court held that it could not refuse to stay its proceedings based on public policy or forum non convenience. The stay could only be refused where the court finds that the arbitration agreement is 'null and void, inoperative or incapable of being performed'. However, in *Global Quality Foods Pvt. Ltd v. Hardee's Food Systems, Inc.*, PLD 2016 Karachi 169, the Sindh High Court refused to stay the suit finding that no purpose would be achieved to refer present parties to arbitration as the same would be a futile exercise without any corporal outcome. In *Cummins Sales and Service (Pakistan) Limited v. Cummins Middle East FZE*, [2015] CLD 1655, it has been held that this is not the job of the court to distinguish between disputes falling within the scope of arbitral agreements and those that do not, such determination befalls the authority of the tribunal.

The Supreme Court of Pakistan in *Kausar Rana Resources (Private) Limited v. Qatar Lubricants Company W.L.L*, [2025] SCMR 517, held that company benches under the Companies Act qualify as 'Civil Courts' under s 2(c) of the Arbitration Act. The term 'Civil Court' was interpreted to include courts exercising special civil jurisdiction, ensuring that specialised courts

could entertain arbitration-related applications, including requests under s 14 of the Arbitration Act for making awards rule of the court (a necessary step to turn an award into a judgment and decree of the court to give legal effect to the award for the purposes of producing res-judicata effect and enforcement).

In *Zaver Petroleum Corporation (Pvt.) Ltd., v. Saif Energy Limited*, 2025 CLD 695, the Islamabad High Court held that the doctrine of forum non conveniens, has no place where the contract between the parties specifically provides for disputes to be settled through arbitration seated in a foreign country.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Section 29 of the Contract Act, 1872 provides that '*Agreements, the meaning of which is not certain, or capable of being made certain, are void.*' The multi-tier clauses providing for pre-arbitral steps must be precise and sufficiently certain that obligations imposed by those steps are clearly defined to enable a court to adjudge whether the obligations imposed by the pre-arbitral steps have been complied with or breached by the parties. Uncertainty of those steps would render the agreement void so no party could insist on their compliance before arbitration could commence.

In *Island Textile Mills Ltd. v. V/O Techno experts*, [1979] CLC 307, the arbitration agreement provided that the parties shall take all measures to settle amicably all disputes or differences which may arise out of the contract or in connection with it. The court held that in case the parties' endeavour to arrive at an amicable settlement was inefficacious, all disputes and differences which might arise out of that contract were to be submitted to arbitration.

In *Federation of Pakistan through D.G. National Training Bureau v. James Construction Company (Pvt) Ltd.*, PLD 2018 Islamabad 1, the Islamabad High Court held that where dispute resolution mechanism enshrined in the contract provides for disputes between parties to the contract to be referred to an engineer/consultant before they can be referred to arbitration and one of the parties to contract without exhausting pre-condition of reference to engineer/consultant files application under s 20 of 1940 Act seeking for appointment of arbitrator and a reference of dispute to arbitration, court should generally turn down such application as premature.

The uncertainty of terms may also render an agreement not capable of specific performance under s 21 of the Specific Relief Act, 1877. The pre-arbitral steps if sufficiently certain and prescribed as a pre-condition to an arbitration, would be enforceable by the court through declining references of matters to arbitration being premature.

(iv) What are the requirements for a valid multi-party arbitration agreement?

The 1940 Act does not contain specific rules on multi-party arbitration. The arbitration laws do not provide for consolidation of arbitrations or joinder of third parties, however, there is nothing in law to prevent a single arbitration reference between multiple parties by consent.

In *Taiga Apparel (Pvt) Ltd. v. International Fabrication Company*, [2025] CLD 954, the Lahore High Court held that where multiple contracts are involved, the threshold issue for a consolidated reference is whether the agreements are so interconnected and interdependent that they constitute an 'indivisible whole'. The Court stressed that when deciding on the referral to arbitration in such scenarios, it must carefully assess: the nature of the disputes; the interdependence of the contracts; the risk of conflicting arbitral awards and the integrity of distinct contractual arrangements.

In *Blue Zone International (Pvt.) Limited v. Pakistan State Oil Company Limited (PSO)*, 2024 CLD 909, the Islamabad High Court noticed that the notice for arbitration, statement of claim, application to make award rule of Court and appeal under S. 39 of arbitration Act, 1940, against judgment and decree passed by Trial Court were all filed by All Pakistan Compressed Natural Gas Association (APCNGA) in its own name on behalf of its members in its representative capacity. The Court held that Petitioner / APCNGA was not a party to the licenses / agreements, therefore, it could neither have invoked arbitration clause embedded therein, nor have filed application or appeal.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

In *Amin Agencies Ltd v. Haji Moosa Haji Oomar*, PLD 1953 Sindh 57, the Sindh Chief Court rejected an application under s 14(2) of the 1940 Act for filing the award for making it rule of the court in a matter where the contract provided for option on one of the parties to initiate arbitration and appoint arbitrator, declaring such contract as voidable for want of mutuality.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Parties to an arbitration agreement and persons claiming through them may enforce the arbitration agreement by compelling arbitration under s 20 of the 1940 Act or seek stay of suit in favour of arbitration under s 34 of the 1940 Act. Arbitration agreements entered by agents acting within their authority shall bind their principals. Agent acting without special powers to enter into an arbitration agreement does not bind principal (See, *Rashida Begum v. Ch. Muhammad Anwar,* PLD 2003 Lahore 522).

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In *Abid Associated Agencies International (Pvt.) Ltd. and others v. Areva and others, [2015] MLD 164, the Islamabad High Court set out a three-staged process for the determination of law governing the arbitration agreement. First, the court will see if the parties have expressly chosen some law to govern the arbitration agreement. Second, the court will determine if the parties have made some implied choice to that effect. Third, in the absence of any express or implied choice by the parties, the court will identify the system of law with which the arbitration agreement in question has the closest and most real connection. In China Water and Electric Corporation (CWE) P.R. China v. National Highway Authority (NHA) Pakistan,* [2023] CLD 1400, the Islamabad High Court noted that where there is no express choice of law governing arbitration agreement, the presumption would be that the parties intended for law chosen to govern the substantive contract to be the law governing the arbitration agreement. The court followed the decision of the Supreme Court in *Hitachi Limited v. Rupali Polyester, [1998] SCMR 1618, where it was held that 'in the absence of any contrary express agreement, the proper law of arbitration agreement will be the same which is applicable to the main agreement.'*

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Pakistani law distinguishes between the seat and venue of arbitration. In *China Water and Electric Corporation (CWE) P.R. China v. National Highway Authority (NHA) Pakistan,* [2023] CLD 1400, the Islamabad High Court recognised that the seat of arbitration is a location selected by the parties as the legal place of arbitration, which consequently determines the procedural framework of the arbitration. The court observed that contracting parties have the freedom to agree on the seat of arbitration. Where parties make no such agreement, the seat may be determined by the arbitral tribunal or the administering arbitral institution in accordance with and subject to the arbitration rules chosen by the parties. Where this is also not done the place where the arbitration is conducted is the seat of arbitration.

In *Zaver Petroleum Corporation (Pvt.) Ltd., v. Saif Energy Limited,* 2025 CLD 695, the Islamabad High Court addressing an objection to the validity of an arbitration agreement between Pakistani entities choosing a foreign seat and a foreign governing law held that merely because the agreement provides for a foreign seated arbitration **cannot by itself be enough to nullify** arbitration agreement when parties have with their eyes open willingly entered into the agreement. The exception to s 28 of Contract Act, 1872 does not distinguish between domestic and foreign arbitration.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

There is no case law offering any guidance on this issue. The State Bank of Pakistan does not recognise cryptocurrency and, by an order issued in 2018, has prohibited banks in Pakistan from dealing with cryptocurrency exchanges. Consequently, it is less likely that Pakistani courts would hold blockchain- and NFT-related disputes as arbitrable.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

In *Taj Muhammad Khan v. NWFP Forest Development Corporation and another, PLD 1984 Peshawar 64, the Peshawar High Court held that where the post on which the person employed was to be appointed as arbitrator, was abolished and the mechanism of its appointment was also materially changed*, the arbitration agreement would become inoperable and could not be given effect.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Certain family and matrimonial, criminal law, insolvency, restructuring and winding up of companies matters (*Orix Leasing Pakistan v Colony Thal Textile Mills Ltd*, PLD 1997 Lahore 443), recovery of bank loans (*First Dawood Investment bank Limited v Mrs Anjum Saleem*, 2016 CLD 920) and issues of fraud and corruption in procuring state contracts and disposal of state largess (*Hub Power Company Limited v WAPDA*, PLD 2000 SC 841) and matters for which specialised tribunals with exclusive jurisdiction have been established by law (*Ch Naseer Ahmed v Rent Controller*, 2018 YLR 29) are not generally arbitrable. The issue of arbitrability is often decided by courts at the point of either considering requests for reference of disputes to arbitration under s 20 of the 1940 Act or application for a stay of the suit in favour of arbitration under s 34 of the 1940 Act. The issue of subject matter arbitrability would affect the jurisdiction of the arbitrator leading to the setting aside or non-enforceability of an award.

The Hon'able Lahore High Court, in *Qatar Lubricants Company W.L.L. & another v. Atif Naeem Rana & Others,* [2025] CLD 78, hearing a stay application filed by non-parties to the arbitration agreement considered whether issues like the rectification of a company's register and allegations of fraud and misrepresentation could be referred to arbitration. It emphasised that staying legal proceedings in favour of arbitration is discretionary and should only be granted if it avoids injustice and inconvenience, particularly when the same evidence overlaps between arbitrable and non-arbitrable claims.

The court also reaffirmed that disputes involving third-party rights, such as company register rectification and investigations into corporate affairs under the Companies Act, 2017, fall within the exclusive jurisdiction of the courts and are not arbitrable.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

Section 33 of the 1940 Act provides that any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the court and the court shall decide the question on affidavits. In *S. Abdul Wahab Muhammad Said v. Noor Muhammad Adamji & Co.,* PLD 1959 Karachi 79, disputes under s 33 are to be decided, as a rule, on affidavits and evidence can only be admitted if it is considered just and expedient. In *Asian Mutual Insurance Co v. Pakistan Insurance Corporation,* PLD 1982 Karachi 778, it was held that an application to challenge the existence and validity of an arbitration agreement cannot be stayed under s 34 of the 1940 Act. Section 32 of the 1940 Act bars filing of a civil suit on any ground whatsoever to challenge the existence, effect, or validity of an arbitration agreement or award and same shall not be set aside, amended, modified, or in any way affected otherwise than as provided in the 1940 Act.

In *Oriental Shipping Co. Limited v. Habib Insurance Co. Limited, 1987 CLC 2198, the Sindh Court held that a party participating in proceedings before an arbitrator without objecting to his jurisdiction, submitting his claim and examining witnesses on disputed points without demur cannot turn back and challenge the jurisdiction of the arbitrator.*

Filing of the written statement or seeking adjournment for the filing of the written statement, without reserving the right to apply to stay the suit, in response to the plaintiff's plaint in a civil suit constitutes waiver of the right to arbitrate and the suit shall not be stayed under s 34 of the 1940 Act.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The 1940 Act is silent on the principle of competence-competence. Being the general principle of law on arbitration, the courts have recognised this principle in matters of foreign arbitration. In the recent decision of the Supreme Court in *Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited,* [2021] CLD 1069, held that there exists no legal impediment in the way of a court or tribunal to decide its jurisdiction. The doctrine of *Kompetenz-Kompetenz allows an arbitral tribunal to determine its jurisdiction. The tribunal's rulings on jurisdiction in the form of an interim award or decisions on jurisdiction in the final award would be reviewable by courts in proceedings for making it the rule of the court.*

Additionally, in *Lakhra Power Generation Company Limited (LPGCL) v. Karadeniz Powership Kaya Bey,* [2014] CLD 337, the Sindh High Court recognised the autonomy of the arbitration clause in the arbitration agreement and held that an arbitration agreement is distinct and separable from the main contract. The doctrine of separability could apply to save the arbitration agreement even where the main contract was void ab initio and not merely voidable.

In respect of domestic arbitration, the issues of existence, validity, and effect of an arbitration agreement may be raised in the court under s 32 of the 1940 Act.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Section 22 of the 1940 Act allows the parties to agree on the manner of appointment of arbitrators. There are three modes for the appointment of arbitrators:

- Appointment of a sole arbitrator with the mutual consent of the parties. If they fail to agree, the court will appoint the arbitrator.
- The court has the power to appoint an arbitrator or umpire in arbitrations without court intervention if:
- The parties fail to concur in the appointment,
- The appointed arbitrator fails, neglects, or refuses to enter upon the reference, or
- A party fails to make an appointment within 15 days of the notice to make an appointment.
- If an arbitration agreement provides for the appointment of two arbitrators, one to be selected by each party, but one party fails to appoint an arbitrator, the other party may appoint their nominated arbitrator to act as the sole arbitrator after providing notice and waiting fifteen days. The defaulting party can request the appointment of their arbitrator if their failure was not deliberate but resulted from a misunderstanding and was not negligent, evasive, or obstructive.

Under s 4 of the 1940 Act, the parties can designate another person or association of persons, including an arbitral institution, to appoint arbitrators. The 2017 Act specifies that the arbitrator must be appointed by agreement of the parties. Under s 5 of the 2017 Act and rule 10 of the 2018 Rules, the parties can appoint a neutral arbitrator, failing which the court may appoint one. If the matter is referred to an arbitration centre, the centre is vested with the power to appoint the neutrals by agreement.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

The 1940 Act is silent about an arbitrator's duty to disclose conflicts. In *Salma Aftab v. Shaikh Muhammad Tufail and others*, [2009] CLC 56, it was held that under section 5 of the 1940 Act, an arbitrator's authority can only be revoked with the leave of the court, under the agreed contractual mechanism, or by a court on grounds set out in section 11 of the 1940 Act. Section 11 of the 1940 Act establishes limited grounds for the removal of an arbitrator, such as failure to act, not entering on the reference, failing to use all reasonable dispatch, misconducting the proceedings, or misconducting themselves.

In *Federation of Pakistan through D.G. National Training Bureau v. James Construction Company (Pvt) Ltd*, PLD 2018 Islamabad 1, the Islamabad High Court explained that 'misconduct' for purposes of the 1940 Act means legal misconduct and is not related to moral turpitude, dishonesty or any immoral or unethical conduct. Legal misconduct refers to misconduct in a judicial sense, arising from an honest though erroneous breach and neglect of duty and responsibility on the part of the arbitrator, causing a miscarriage of justice. Misconduct includes failure to perform essential duties cast on an arbitrator and any irregularity of action that is not consonant with general principles of equity and good conscience. Misconduct also includes instances of bias, conflicts of interest, corruption or any behaviour that compromises the integrity and fairness of the arbitration process. If an arbitrator fails to adhere to established rules and procedures or demonstrates a lack of competence or impartiality, the court may also decide to remove them.

Where the court removes one or more arbitrators under section 11 of the 1940 Act, the court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies under section 12 of the 1940 Act.

The 2018 Rules specify the criteria for disqualification of an arbitrator, including insolvency, unsoundness of mind, criminal charges involving moral turpitude or disciplinary proceedings. Under these rules, for court-referred and private ADR processes under the 2017 Act, neutrals, including arbitrators and mediators, may be disqualified by the government after being given an opportunity to be heard, in consultation with the High Court. Neutrals must disclose any interest in the subject matter and parties, which may be waived by the parties. Under Rule 9, the High Court or ADR Centre may, after conducting an inquiry and giving the neutral an opportunity to be heard, cancel the appointment, and replace the neutral. It is noteworthy that the eligibility rules and process for enlistment of arbitrators have not yet been devised. Therefore, the provisions of the 2018 Rules pertaining to the selection, enlistment and removal of neutrals are relevant to mediations only.

In *Communication and Works Department v. Pavital/Pivato Joint Venture and others*, [2003] CLC 1798, it was held that an application for removal cannot be made if the party has participated in the proceedings without raising an objection. In *Mian Fazal Muhammad (Deceased) through his Legal Heirs v. Province of West Pakistan and others,* [1975] SCMR 312, the Supreme Court held that after an award has been rendered, no application under section 11 can be made; any applications pending before the award was rendered become infructuous. Thus, a challenge must be made before the award is rendered and must relate to facts that rendered the arbitrator partial or dependent but were not disclosed during the appointment and were not known to the party.

An order by the court revoking the appointment of or removing an arbitrator or rejecting a challenge under section 39 of the 1940 Act is not appealable. A revision can be filed where a question of law arises. If a High Court passes the order, the matter can be taken to the Supreme Court through a petition for leave to appeal under Article 185 of the Constitution.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Under the 1940 Act, there exist no restrictions to a natural person being appointed as an arbitrator, nor are there any requirements for professional experience, residence, gender, nationality or otherwise. Article 207 of the Constitution of Pakistan 1973 prohibits the appointment of sitting judges as arbitrators.

The case law assists in the general duties of the arbitrators towards the parties. In *Defence Housing Authority, Islamabad v. Multi-National Venture Development (Pvt.) Ltd.*, [2019] CLD 566, the Islamabad High Court clarified that an arbitrator acts as a judge for the parties involved, ensuring a non-partisan stance. The arbitrator must be unbiased, impartial, and free from any interest, prejudice or partiality. The Peshawar High Court judgment in *Syed Faqir Shah v. Haji Inayatullah Khan*, [2013] MLD 689 highlighted that an arbitrator must adhere to principles of natural justice and cannot act behind the parties' backs. This ensures fairness and transparency throughout the arbitration process. The Supreme Court decision in *Muhammad Farooq Shah v. Shakirullah, [2006] SCMR 1657 reinforced that once an arbitrator enters arbitration,*

they must avoid any conduct that could suggest partiality or unfairness. The arbitrator's actions must consistently reflect neutrality and justice.

While no restrictions exist relating to the qualifications of arbitrators under the 1940 Act, however, s 4 of the 2017 Act provides that the 'neutral' which includes mediators and arbitrators, for court-referred and private arbitrations may be selected from a list established by the government after consultation with the High Court. The neutral enlisted may be 'lawyers with at least seven years practicing experience, retired Judges, retired civil servants, ulema, jurists, technocrats and experts and such other persons of repute and integrity having such qualifications and experience as may be prescribed'.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There exist no specific rules or codes of conduct concerning conflict of interest for arbitrators. However, there exists case law explaining the personal misconduct of an arbitrator which may result in challenging an arbitrator in court or result in setting aside his award. The IBA Guidelines are seldom chosen in arbitrations seated in Pakistan but frequently chosen by Pakistani parties in foreign seated arbitrations.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

The arbitration law in Pakistan does not empower an arbitrator to issue interim measures or other form of preliminary relief.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Parties to arbitration are permitted to invoke the jurisdiction of the relevant court under section 41 of the 1940 Act. For the purpose of and in relation to arbitration proceedings, the court has the same power to make orders in respect of any of the matters set out in the Second Schedule as it does for proceedings before the court. Under paragraph 4 of the Second Schedule of the 1940 Act, the court may pass orders for:

a. The preservation, interim custody, or sale of any goods which are the subject matter of the reference;

b. Securing the amount in dispute in the reference;

c. The detention, preservation, or inspection of any property or thing which is the subject of the reference or regarding which any question may arise, and authorizing, for any of the aforesaid purposes, any person to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken, any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

d. Interim injunctions or the appointment of a receiver;

e. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

The provisions of the CPC apply to such court proceedings. In *Pakistan Airline Pilots' Association v. Federation of Pakistan through Secretary for Ministry of Interior, Islamabad*, 2021 PLC(CS) 860, the Sindh High Court held that jurisdiction to grant interim relief is conferred in respect of arbitration proceedings before the court on the applicant's conceding to and willingness to go to arbitration. The provision is best available to a person who has made an application to the court

under section 20 of the 1940 Act for reference of matters to arbitration. In *Ovex Technologies (Private) Limited v. PCM PK (Private) Limited,* 2020 CLD 15, the Islamabad High Court clarified that parties to arbitration are permitted to invoke the jurisdiction of the court to apply for an injunction either before the commencement of arbitration proceedings, during the pendency of such proceedings, or even after an arbitration award has been rendered. The invocation of such right to obtain interim or conservatory measures does not disentitle a party to an arbitration agreement from enforcing the arbitration agreement. In *AB Sukab v. Ghee Corporation of Pakistan*, PLD 1993 Karachi 508, it was held that the commencement of arbitration would not deprive the court of the power to issue interim measures.

The interim measures may remain effective even if the suit is withdrawn or an arbitral tribunal is constituted.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

The arbitrator lacks the power to compel the attendance of witnesses through summons or other processes. Under s 43 of the 1940 Act, the court has the power to issue the same processes (which include summons and commissions for the examination of witnesses and summons to produce documents) to the parties and witnesses whom the arbitrator or umpire desires to examine as the court may issue in suits tried before it. Persons failing to attend under such process, making any other default, refusing to give their evidence, or being guilty of any contempt towards the arbitrator or umpire during the investigation of the reference shall be subject to the same disadvantages, penalties and punishments by order of the court on the representation of the arbitrator or umpire as they would incur for similar offenses in suits tried before the court. Under Order XI Rule 12 of the CPC, a party may apply to the court for an order directing any other party to make discovery on oath of documents that are or have been in their possession or power relating to any matter in question. Under Order XI Rule 21 of the CPC, failure to comply with an order to produce a document may result, where the defaulter is the plaintiff, in dismissal of the suit for non-prosecution, and where the defaulter is the defendant, in their defence being struck out.

(iv) Are decisions by emergency arbitrators enforceable in your country?

So far, there is no case law deciding the question of the enforceability of emergency arbitrators' decisions passed under the institutional rules adopted by the parties' agreement.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

In *Pakistan National Shipping Corporation and nine others v. Coniston Limited and another,* [2020] CLC 454, the Sindh High Court held that in matters of concurrent jurisdiction of this court with a foreign court, the comity does not demand that this court having jurisdiction to abdicate its duty to adjudicate a dispute in favour of a foreign court. The court also refused to issue an anti-suit injunction, holding that it was inappropriate and would be violative of principles of comity that one court would injunct another court on the grounds of forum non conveniens. This was not a case involving an anti-suit injunction in favour of foreign seated arbitration.

In *National Refinery Limited v. Anaud Power Generation Limited,* 1999 YLR 1673, the Sindh High Court recognised that arbitration proceedings can only be stopped by mutual agreement of the parties or by an injunction issued by the court.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

The 1940 Act applies to arbitrations in Pakistan and does not extend to foreign seated arbitrations. In *Avari Hotel Limited v. Hilton International Company Limited*, PLD 1985 Karachi 425, it has been held that foreign seated arbitration governed by institutional rules inconsistent with the provisions of the 1940 Act would be outside the scope of the 1940 Act pursuant to section 47. In *Hasan Ali Rice Export Co. v. Flame Maritime Limited*, 2004 CLD 334, the Sindh High Court held that arbitration proceedings commenced in a foreign country would be regulated and controlled by the law applicable at the seat or venue of arbitration and further held that the Karachi High Court in the exercise of its original civil jurisdiction could have no control or domain over such foreign arbitration proceedings.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

Paragraph 6 of the First Schedule to the 1940 Act requires, absent parties' agreement to the contrary and subject to the provisions of any applicable law in force, that parties to an arbitration, as well as those claiming under them, must comply with the arbitrators' or umpire's requests to:

a. Be examined on oath or affirmation regarding the matters in dispute;

b. Produce all relevant books, deeds, papers, accounts, writings and documents within their possession or power as required or requested by the arbitrators or umpire;

c. Perform any other actions as required by the arbitrators or umpire during the arbitration proceedings.

The arbitrator lacks powers to compel the disclosure or discovery of documents in arbitration, however, he may draw adverse inferences in case a party wilfully refuses to disclose a document in its possession and power after being ordered to reveal it to the requesting party.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Documents that are either confidential, privileged or not necessary for the fair disposal of the matter in action or whose disclosure would cause undue hardship or inconvenience to a party would not generally be ordered to be disclosed.

(iii) Are there special rules for handling electronically stored information?

Under s 46A of the *Qanun-e-Shahadat,* statements in the form of electronic documents generated, received or recorded by an automated information system while it is in working order, are relevant facts and can be proved by a print out or other form of output of an automated information system treating them as the primary evidence. In the absence of evidence to the contrary it shall be presumed that the automated information system was in working order at all material times. Under s 59 of the *Qanun-e-Shahadat,* opinion of experts may be relevant as to authenticity and integrity of electronic documents by or through an information system or as to the functioning, specifications, programming and operations of information systems.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

There is no express provision in the 1940 Act that the arbitration proceedings shall be confidential. However, arbitration hearings are held in camera without access to third parties. Under s 14(2) of the 1940 Act, at the request of any party to the arbitration agreement or any person claiming under such party, or if so directed by the court, the arbitrators or umpire are required to file the award (or a signed copy of it) in court together with any depositions and documents which may have been taken and proved before them. Having been filed at court, the award, along with the depositions and documents, may become accessible to third parties or the general public. Parties may apply to the court for sealing the records of arbitration to prevent them from being provided to the general public, and in severe cases (generally affecting national security), court hearings may also be ordered to be held in camera. The 2018 Rules require all matters relating to the ADR proceeding and the settlement reached as a result of the ADR process to be kept confidential.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

The 1940 Act does not confer on the arbitral tribunal the power to protect trade secrets and confidential information. However, the tribunal may pass suitable orders to protect the integrity of the arbitration process.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

The 1940 Act does not contain rules of privilege. The rules of privilege are contained in the *Qanun-e-Shahadat* and may be used by the arbitrators as guidance. A party is not bound to produce any confidential communication between him and his legal advisors. The statements laid by the clients before their counsel for the purposes of obtaining legal advice are privileged except where the communications are not of a confidential nature.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The IBA Rules on the Taking of Evidence in International Arbitration are not usually adopted in arbitrations seated in Pakistan; however, they may be used as guidance to the extent that they do not conflict with Pakistani laws.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

In *Managing Director, Karachi Fish Harbour Authority v. Hussain (Pvt.) Ltd.,* 2014 CLC 1519, the Sindh High Court held that the arbitrators have broad authority to regulate their procedure and are not bound to follow any specific guidelines, subject to the condition that the parties are allowed to lead evidence in support of their case and provided with an opportunity to contest the claims. The Sindh High Court in *Design Group of Pakistan v. Clifton Cantonment Board,* [1990] MLD 261, vitiated an award where the arbitrator proceeded in disregard of all evidence or even without calling upon parties to lead evidence. In *Alpine Construction Co. Ltd v. University of Karachi,* [1990] MLD 1764, it was held that the arbitrator is neither bound by any set rule of evidence nor required to frame issues and give his findings separately on each issue. The Supreme Court in *Muhammad Kamal-ud-din Khan v. Syed Munir Syed,* [2022] SCMR 806, set aside an award passed in undue haste and in disregard of the requirements of due process and fair trial. The Court noted that the award failed to (i) confirm whether the plaintiff had submitted a written claim or presented evidence, and (ii) show that the arbitrator had even considered or discussed the evidence. Additionally, it did not indicate that the defendant was allowed to respond to the claim, present evidence, or cross-examine the plaintiff and his witnesses.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

In *Safia Bai and others v. Karachi Cooperative Housing Societies Union Limited,* PLD 1967 Karachi 598, it was held that the technical rules of evidence and procedure enshrined in *Qanun-e-Shahadat and* the CPC **do not apply to arbitration proceedings. However, the arbitrators generally follow the general principles of the law of evidence and procedure.**

In practice, the witness testimony is presented as an examination-in-chief; however, in factually complex cases, the testimony is also given in the form of a witness statement. The contents of the witness statement are verified on oath at the hearing. The examination-in-chief is followed by cross-examination by the opposing side. A re-examination after the cross-examination can be done, but it is rarely done. Arbitrators also question witnesses at the hearing to clarify matters which remain unexplained at the hearing.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

Under s 3 of the *Qanun-e-Shahadat*, all persons are competent to testify unless they are prevented from giving evidence for failure to understand the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. Similarly, persons convicted by a court of law of perjury or giving false evidence are not competent to testify as a witness unless it is shown that they have repented after that and mended their ways.

Under s 13 of the 1940 Act, arbitrators or umpires can administer an oath to the parties and witnesses appearing unless a different intention is expressed in the agreement. It is not necessary that every testimony at the hearing be on oath or solemn affirmation, and the matter is subject to the parties' agreement. In practice, an oath or solemn affirmation is generally administered to witnesses who appear to give evidence at the hearing.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

It is the discretion of the arbitrator to decide how much weight he would give to the testimony given at the hearing. In practice, the testimony of interested or related witnesses who have either some interest in the outcome of the arbitration or are not wholly independent of persons in dispute is given less credence compared to the testimony of independent witnesses. The evidence of interested witnesses would be more credible and believed if corroborated by some independent evidence as well.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

In arbitration proceedings, the *Qanun-e-Shahadat's* or the CPC's provisions do not strictly apply. However, their broader principles are used if there is no agreement between the parties due to the lack of procedures and processes stipulated under the 1940 Act. Under s 59 of the *Qanun-e-Shahadat*, expert opinions may be relevant where the court has to form an opinion upon a point of foreign law, science or art, or the identity of handwriting or finger impressions.

The expert must be subjected to cross-examination in the same manner as any other witness. An expert report where the expert is not subjected to cross-examination could not be relied upon to form any opinion. The *Qanun-e-Shahadat* is silent on the independence and impartiality of an expert; however, as a general principle of law, an expert must not be related to the parties or have any interest in the outcome of the dispute for his opinion to be treated as professional and unbiased.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

In *Muhammad Saghir Bhatti & Sons v. Federation of Pakistan,* PLD 1958 SC (Pak.) 221, the Supreme Court held that the arbitrator appointing an expert for testing cement does not amount to delegation of authority.

The arbitrator may, when considered necessary, with the parties' knowledge and consent, seek assistance from an expert witness on a specific (technical) matter arising during the arbitration. No rules exist relating to party-appointed or tribunal-appointed expert witnesses. The expert is appointed by the tribunal merely as an assistant on technical issues, cannot appear as a witness and cannot be cross-examined by the parties. The arbitrator may also consult the parties on the questions submitted to the expert witness. Absent consent, where necessary for the efficient and fair disposal of the proceedings, the arbitrator may seek the assistance of experts in accordance with ss 59 to 65 of the *Qanun-e-Shahadat.*

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing is not a common practice in arbitrations in Pakistan.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

Pakistan has not implemented any rules or requirements for the use of arbitral secretaries. In Pakistan, arbitrators seldom appoint secretaries to assist them in the conduct of arbitration. In *Manzoor Ahmad v. Muhammad Shahbaz*, [2005] YLR 1526, considered a matter where the parties have not conferred on the arbitrator authority to appoint any assistant. The court noted that the question of lack of authority was not of much significance because the award was not made by the assistants but rather by the arbitrator. This implies that the award may be successfully challenged if the tribunal secretary is involved in giving the award.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Advocates licensed to practice in Pakistan are required to adhere to the ethical rules prescribed by the relevant bar council. However, there are no professional standards applicable to arbitrators in Pakistan.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No, the arbitral institutions in Pakistan do not implement rules empowering the arbitral tribunals to exclude the counsel for the parties for any reason. The tribunals generally have broad discretion to adopt measures to preserve the integrity of the proceedings.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Pakistan has not adopted any rules regarding remote hearings in arbitration. Superior Courts and arbitral tribunals have been conducting proceedings remotely during the COVID period.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Under s 14 of the 1940 Act, an award must be in writing and signed by the arbitrators. An unsigned award is not an award for the purpose of making it a rule of the court. Unless the parties specify any formal requirements for an award, the award may be in any form. It doesn't need to use any particular words or technical expressions. Recitals are not essential, and references in the recital do not incorporate a document to form part of the award. It is sufficient that the language employed is evidence of an intention to decide the matters submitted to the arbitrators in final terms.

All awards, except those made in references made by the court in pending suits under s 21 of the 1940 Act, must be stamped under provisions of the Stamp Act, 1899 (Act No. II of 1899). Similarly, an award creating, declaring, assigning, limiting, extinguishing, in present or future, any right, title or interest, whether vested or continent of a value of one hundred rupees or above, is required to be registered under the Registration Act, 1908 (Act No. XVI of 1908).

In *Water and Power Development Authority v. ICE Pak International Consulting Engineers of Pakistan*, [2003] YLR 2494, the Lahore High Court held that an arbitrator is expected to render an award in the light of the contract made by parties and to give effect to the same, but not to make a new contract on behalf of the parties. The court in *Pakistan v. Messrs Rajasthan Alloy and Steel (Pvt.) Ltd*, [2002] CLD 61, held that it is not the function of an arbitrator to be influenced by his imagination and experience in finding faults with the relevant clauses of the contract between the parties.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

In *Punjab Province v. Zafar Iqbal Cheema*, [1983] CLC 513, the Lahore High Court held that an arbitrator has no powers to impose a penalty unless so provided in terms of contract.

In *A. Qutubuddin Khan v. CHEC Millwala Dredging Co. (Pvt.) Limited*, [2014] SCMR 1268, the Supreme Court addressed the arbitrator's powers regarding the awarding of interest prior to the date of a decree. The Court held that an arbitrator does not have the authority to award interest for the period before the date of the decree unless there is an express or implied agreement between the parties, a basis in mercantile usage, statutory provisions or equitable grounds in a proper case. Specifically, Section 34 of the CPC which allows courts to award interest from the date of the suit or for a prior period, does not apply to arbitration proceedings. Similarly, the Interest Act of 1839 does not grant arbitrators the power to award interest. The Court further explained that while an arbitrator could award interest from the date of the award until the payment of the amount due, they could not award interest for the period beyond the decree passed by the court in terms of the award. Under Section 29 of the 1940 Act only the court has the discretion to order interest from the date of the decree at a rate deemed reasonable by the court. Granting interest prior to the date of the award, in the absence of express or implied statutory provisions or an agreement between the parties, constitutes an error of law apparent on the face of the award.

In *Messrs Ibrahim Fibres Limited through Managing Director v. Hameed Masood (Pvt.) Limited through Director,* 2006 YLR 1523, the Lahore High Court held that the interest awarded by the arbitrator on the just and equitable grounds in the absence of parties' agreement which was confirmed by the court would become direction of the court fully covered under s 29 of the 1940 Act.

(iii) Are interim or partial awards enforceable?

Under s 27 of the 1940 Act, the arbitrators or umpire may make an interim award unless a different intention appears from the arbitration agreement. For all purposes, any reference to an award in the 1940 Act includes a reference to an interim award. This means that, like a final award, the interim awards may also be made a rule of the court for the purposes of enforcement and may be challenged by filing objections to the request for making them the rule of the court.

Foreign interim and partial awards can also be recognised and enforced under the 2011 Act. In *China Water and Electric Corporation (CWE) P.R. China v. National Highway Authority (NHA) Pakistan*, [2023] CLD 1365, the Islamabad High Court dismissed NHA's application resisting recognition and enforcement of an interim award issued by the arbitral tribunal seated in Paris and ordered recognition and enforcement of the said award directing NHA to pay the sum under the interim award. The interim award was issued in favour of CWE, enforcing the decision of the dispute board under sub-cl. 20.4 of the FIDIC Conditions of Contract.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Under s 10 of the 1940 Act, where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties. Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as above, the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

The two arbitrators hear the case and issue an award if they reach the same decision, and in cases where the decisions of the two arbitrators differ, they must refer the matter to the umpire together with the reasons for their decisions. The

umpire's decision shall be final, and the award is issued accordingly. In cases where a three or more-member tribunal is constituted, arbitrators can issue dissenting opinions, which are annexed to the majority award.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

The claimant may withdraw its claims in the arbitration and request the arbitrator to pass an award dismissing all claims as withdrawn. The 1940 Act does not provide any guidelines on the procedure to be adopted if a settlement is reached between the parties. In practice, where the parties enter any settlement agreement, they may request the arbitrator to issue an award dismissing all claims as settled or in terms of the settlement agreement. In *Muhammad Yousuf v. Abdur Rashid & Others, PLD* **1967 Karachi 508, it was held that an arbitrator may issue an award in terms of the agreement of the parties settling their dispute, and such award cannot be challenged.**

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Under section 13(d) of the 1940 Act, the arbitrator can correct the award unless a different intention appears from the parties' agreement. However, these corrections are confined to clerical mistakes or errors arising from accidental slips or omissions. The courts also have the power to make such corrections under section 15(c) of the 1940 Act.

The 1940 Act is silent regarding disputes over the interpretation of an award. In practice, courts, to give effect to the award in proceedings for making the award the rule of the court, must pronounce judgment according to the award, and upon the judgment so pronounced, a decree shall follow. The decree prepared by the court contains the precise relief granted, which forms the basis of enforcement. If the award is so indefinite that it cannot be executed, the court has the power under section 16(1)(b) to remit the award to the arbitrator to make it definite for enforcement.

In *National Highway Authority v. Hakas (Private) Limited,* PLD 2011 Islamabad 43, the Islamabad High Court held that under section 15 of the 1940 Act, the court has the authority to modify an arbitration award if part of the award pertains to matters not referred to arbitration and can be separated without affecting the decision on referred matters, if the award is imperfect in form, contains obvious errors that can be amended without impacting the decision, or contains clerical mistakes or errors from accidental slips or omissions. The court cannot delve into the case's merits or assume the arbitrator's role in evaluating evidence. However, the court can rectify errors on the record and modify or correct the award even if objections are time-barred, provided these changes do not alter the arbitrator's decision. A modification must be set aside if it changes the arbitrator's decision.

In *Muhammad Iqbal v. P.I.D.C.,* [2000] CLC 876, the Lahore High Court held that after the award has been made, the arbitrator can only correct typographical errors.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The 1940 Act is silent on this issue. The provisions of the CPC may be used as guidance. Under s 35 of the CPC, where the court directs that any costs shall not follow the event resulting in the unsuccessful party bearing the costs, the Court shall state its reasons in writing. Generally, due to the parties' stipulation in the arbitration agreement to share the costs of arbitration equally, in practice, each party has to bear its own costs.

In a published award by three Pakistani arbitrators in an ICC arbitration seated in Singapore in the matter of *Wi-Tribe Limited v. Telecard Limited*, [2010] CLD 500, the tribunal held that the grant of costs is at the discretion of the tribunal and it ordinarily must follow the event. The successful party is entitled to his costs unless he is guilty of misconduct or there is some other good cause for depriving him of it, such as not coming to the tribunal with clean hands. The test for granting or refusing costs is not whether a party has succeeded completely in the case or not but a party who substantially succeeds in his case is entitled to his costs, although he may not have got the precise form of relief he wanted. Where the claimant succeeds only on the part of his claim but fails on the most important heads of controversy, the respondent is entitled to the whole costs of the arbitration.

(ii) What are the elements of costs that are typically awarded?

Under paragraph 8 of the first schedule to the 1940 Act, unless otherwise agreed by the parties, the arbitrators or the umpire have discretion to award (a) the cost of the reference, (b) the cost of award and (c) the costs to be paid as between legal practitioner and client, and may determine by whom and in what manner such costs should be paid in whole or in part.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitrators have the jurisdiction to determine the fees and charges due in respect of the arbitration, the making of an award and the costs and charges of filing it. They may direct the applicant to pay the same before filing the award under s 14 of the 1940 Act for making it the rule of the court. If an arbitrator or umpire refuses to deliver the award without the payment of their demanded fees, the affected party can apply to the court for assistance under s 38 of the 1940 Act. The court may order that the award be delivered upon the applicant paying the demanded fees into the court. The court will then determine a reasonable fee for the arbitrator or umpire from the money deposited, paying them accordingly. Any remaining balance of the deposited fees will be refunded to the applicant.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

As stated above, the arbitrators have the discretion to determine who should pay the costs in full or in part. The tribunal considers which party substantially succeeded in their case. A party who achieves substantial success is generally entitled to their costs, even if they did not obtain the exact relief they sought. The tribunal may also consider any misconduct or other significant reasons that might warrant depriving the successful party of their costs, such as not approaching the tribunal with clean hands. Typically, costs should follow the event, meaning the party that wins the arbitration is usually entitled to recover costs. If a party only partially succeeds, especially if they fail on the most important issues, the tribunal may decide that the other party is entitled to some or all of the costs.

(v) Do courts have the power to review the tribunal’s decision on costs? If so, under what conditions?

The tribunal’s decision on costs is not reviewable by courts. Under s 38(3) of the 1940 Act, the court may make such orders as it thinks fit respecting the costs of arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

At the stage when the award is filed in the court for making it the rule of the court, the award debtor may challenge the award by filing an objection petition within thirty days of the notice by the arbitrator of the making of the award. Section 30 of the 1940 Act provides limited grounds on which an award can be challenged, which are:

a. That an arbitrator or umpire has misconducted himself or the proceedings;

b. That an award has been made after the issuance of an order by the court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

c. That an award has been improperly procured or is otherwise invalid.

In *Gerry's International (Pvt) Limited v. Aeroflot Russian International Airlines*, [2018] SCMR 662, the Supreme Court summarised the general principles regarding the powers of an arbitrator, the grounds on which the award can be set aside, and the scope of judicial review in the following terms:

- When a claim or dispute is referred to an arbitrator, he serves as the sole and final judge of all questions of law and fact. The arbitrator has the exclusive authority to judge both the quality and quantity of evidence presented during the proceedings.
- Section 26-A of the 1940 Act requires arbitrators to provide reasons for their findings to ensure consistency and prevent contradictions with the material on record. However, the brevity of the reasons given is not sufficient ground for a court to interfere with the award.
- Arbitrators must act within the confines of the contract and cannot make arbitrary, irrational or capricious decisions. Their authority is derived from the contract and governed by the 1940 Act. Any deliberate departure from or conscious disregard of the contract can indicate misconduct and may invalidate the award, suggesting possible mala fide action;
- The award may be set-aside in case the arbitrator exceeds his jurisdiction. The court can examine the arbitration agreement to address jurisdictional issues;
- Arbitrators are bound to follow the law and cannot ignore or misapply it to achieve what they consider just and reasonable. Errors in law on the face of the award refer to identifiable incorrect legal propositions forming the basis of the award. Courts can set aside awards even without objections if they are a nullity, prima facie illegal or otherwise unfit for maintenance. Courts must scrutinise awards before making them a rule and not act mechanically.
- Misconduct by an arbitrator can be legal or moral. Legal misconduct involves breaches of duty, causing a miscarriage of justice or failure to perform essential duties. Moral misconduct entails a lack of good faith, impartiality and scrupulous regard for justice. Misconduct does not equate to fraud but includes neglect of duties and responsibilities. Examples of misconduct include failing to decide all referred matters, deciding unreferenced matters, issuing inconsistent or ambiguous awards, procedural irregularities and apparent factual mistakes. Arbitrators are considered to have misconducted themselves if they fail to address specific objections raised by a party concerning the legality of some claims by the other party.
- Courts cannot review the merits of an award or question the arbitrator's legal or factual decisions. They should not re-examine or reappraise the evidence the arbitrator considers or adopt their own interpretation if multiple views are possible. The reasonableness of an award is not for the court to judge unless it is preposterous or absurd.
- An award remains valid despite reasoning errors unless it results from corruption, fraud or contains a legal apparent mistake. Courts should not speculate on the arbitrator's reasoning if it is not explicitly stated in the award. They should also refrain from probing the mental processes behind the arbitrator's conclusions unless disclosed in the award.
- Courts do not act as appellate bodies over arbitration awards and should not seek latent errors in the proceedings or the award. They can set aside an award only if it is evident from the award that there is no supporting evidence or if it is based on incorrect legal propositions. Awards can also be set aside for apparent errors on the face of the award or record.

In *Joint Venture Kocks K.G. /RIST v. Joint Venture Kocks K.G. /RIST*, PLD 2011 SC 506, it was held that the objections to the award must be clear and unambiguous, stating with precision, clarity and certainty the grounds as to why the same should be interfered. Recently the Supreme Court in *Injum Aqeel v. Latif Muhammad Chaudhry*, [2023] SCMR 1361, held that the opinion/decision of the arbitrator should not be lightly interfered with by the court while deciding the objection until a clear and definite case within the purview of section 30 of the 1940 Act is made out. As regards the arbitrator's personal misconduct, the court ruled that the arbitrator must be absolutely disinterested and impartial, as he is bound to act with scrupulous regard to the ends of justice. An arbitrator must be a person who stands indifferent between the parties.

In *the Province of Baluchistan v. Muhammad Hassan,* [1988] CLC 1583, the Balochistan High Court set aside an award where the parties needed to have been served with the proper notice. The Sindh High Court refused to set aside awards where the award was based on oral evidence and material produced before arbitrators, and the arbitrator did not give a decision on each and every issue separately (See *Gul Ahmed Textile Mills Ltd, Karachi v. Starko Ltd, Karachi,* [1981] CLC 1667, and *Variety Traders v. Government of Pakistan*, PLD 1980 Karachi 30).

The challenge proceedings in the civil court may take between one and three years to conclude, however, the matter may take even much more time to resolve in cases of appeals to the superior courts which significantly take longer time to take up appeals for regular hearing.

Under s 17 of the 1940 Act, if the court finds no reason to remit or reconsider the arbitration award or to set it aside, it shall, after the period for challenging the award has passed or after denying such a challenge, pronounce judgment based on the award. A decree will be issued following this judgment, and no appeal can be made against this decree unless the decree exceeds or does not comply with the award. The court's decision setting aside or refusing to set aside an award is appealable under s 39 of the 1940 Act. The filing of an appeal does not operate as a stay of execution of the decree, and the appellate court may, by order, stay enforcement on the condition that the award debtor pays the decretal sum to the court.

An award not made rule of the court would not create any right or title. Until the award converts to a judgment and a decree follows the judgment so rendered, no enforcement action would lie as it is the decree and not the award which is executed by the court under Part II read with Order XXI of the CPC.

Only an award can be challenged under ss 30 and 33 of the 1940 Act. In *Lahore Development Authority through its Chief Engineer-I v. M/s Zahir Khan and Brothers through its Chief Executive Officer etc.,* [2025] LHC 6277, the Lahore High Court held that the tribunal's procedural order concerning bifurcation of certain claims cannot be challenged being not an award.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

This issue has not been addressed by courts so far, however, in *Muhammad Itbar Khan v. Fazal Hussain*, PLD 1990 Lahore 116, it was held that where the parties agree to be bound by the conclusion/decision of the Court in accordance with the deviated procedure agreed upon by them, then the Court assumes the role of the arbiter between them and its decision tantamount to a consent judgment and there could be no appeal against it. By analogy an agreement that the decision of the arbitrator shall be final and binding with no recourse to courts would be valid and no challenge lie against the award. However, the general law as explained by the Lahore High Court in *Ravi Glass Mills Limited v. I.C.I. Pakistan PowerGen Limited,* 2004 YLR 2503, is that an agreement executed between the parties in violation of law is void. No man can exclude himself from the protection of courts by contract. It may be argued that the statutory right to challenge an award under s 33 of the 1940 Act cannot be waived by agreement of the parties as this would amount to exclusion from protection of courts.

In *Muhammad Yasin v. Muhammad Farooq*, [1989] MLD 2010, the Sindh High Court held that where a party to an arbitration agreement allowed arbitrators to proceed with a reference submitted to their jurisdiction without objection, such party is estopped from challenging the arbitrator's jurisdiction. For a waiver of a right by conduct, it must be shown that a person entitled to a right had the knowledge of the breach and he had acquiesced or failed to act accordingly (See, *Vice-Chancellor, University of Balochistan, Quetta v. Chancellor, University of Balochistan, Quetta*, [2012] MLD 1597).

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

There is no provision in the 1940 Act providing for an appeal against the award.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Under s 16 of the 1940 Act, the court has the authority to remit an arbitration award or any referred matter back to the arbitrators or umpire for reconsideration under specific conditions: if the award leaves any referred matters undetermined or addresses non-referred matters inseparably from referred ones; if the award is too indefinite to execute; or if there is an apparent legal error on the face of the award. The court will set a deadline for the arbitrator or umpire to submit their reconsidered decision, which can be extended by the court. If the arbitrator or umpire fails to meet this deadline, the remitted award will become void.

(v) Is there a specialist arbitration court in your jurisdiction?

There is no specialist arbitration court in Pakistan. In respect of arbitration proceedings under the 1940 Act, recourse may be made to the court which would otherwise have jurisdiction in the matter under provisions of the CPC had there been no arbitration agreement.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

The Pakistani courts recognise the general principle that the '*law should be worn by the Judge on his sleeves*', which means that the judges are expected to know the law and give the same effect even if the litigants or their counsel fail to draw court's attention to the correct law or invoke the wrong law in their submissions or arguments. This principle has been recently reconfirmed in the case of *Homoe Dr Asma Noreen Syed v. Government of the Punjab*, [2022] SCMR 1546 where the Supreme Court held that justice should be imparted according to the law, notwithstanding whether the parties in a lawsuit before the court are misdirected and misplaced in that regard. The question of application of this principle is respect of an arbitration has not arisen in any case so far.

> In *China International Water v. Pakistan Water and Power Development Authority*, PLD 2005 Karachi 670, the Sindh High Court ruled that a detailed discussion by the arbitrator on the issues showed no apparent mistake of fact or law. The court emphasised that its jurisdiction in such matters is supervisory rather than appellate. It is not required by law to reject the arbitrator's findings simply because a different conclusion could be drawn from the evidence and examination of the record.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

Where an arbitrator acts in accordance with his or her duties and makes an award, there can be no question of civil liability. In *Haq Nawaz Khan v. The State*, [2005] YLR 1895, it was held that while the arbitrators do not enjoy statutory immunity, no personal civil or criminal liability has been found against arbitrators, even where the award of the arbitrator was set aside based on misconduct.

(ii) Does this immunity, if any, extend to criminal liability?

Yes, the immunity extends to criminal liability.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The Supreme Court in *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd.*, 2024 SCMR 64 ruled that in defining a 'foreign arbitral award' for applicability under the 2011 Act, the legislature has adopted a pure 'territorial approach' and had made in this regard the 'seat of arbitration' the sole criterion. Not only the governing laws but also the nationality of the parties to the award are irrelevant in determining the status of an arbitral award under the 2011 Act.

Under s 5 of the 2011 Act, the party applying for recognition and enforcement of foreign arbitral award under this Act shall, at the time of the application, furnish (a) the duly authenticated original award or a duly certified copy thereof, and (b) the original agreement referred to in Article II or a duly certified copy thereof to the court in accordance with Article IV of the New York Convention. In *Tradhol International SA Sociedad Unipersonal v. Shakarganj Limited,* PLD 2023 Lahore 621, the court emphasised that its role is limited to examining the documents submitted for enforcement. This is done under the doctrine of pro-enforcement bias, which favours the enforcement of such awards whenever possible. Under s 3 of the 2011 Act, the high court has exclusive jurisdiction to recognise and enforce foreign arbitral awards.

Under s 6 of the 2011 Act, unless the court refuses the application seeking recognition and enforcement of a foreign arbitral award, the court shall recognise and enforce the award in the same manner as a judgment or order of a court in Pakistan.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Once the court dismisses the award debtor's objections to the enforcement of the foreign arbitral award, the court shall convert the application to recognise and enforce the award into an execution petition to enforce the award in the same manner as if it is the judgment of the court. Regarding the domestic awards, the awards must first result in a judgment in the court proceedings for making the award rule of the court. Once the judgment is passed in terms of the award and the decree follows, the same is executed in the manner provided in the CPC.

(iii) Are conservatory measures available pending enforcement of the award?

Under s 18 of the 1940 Act, the court retains the authority to issue interim orders after the filing of an award, regardless of whether notice of the filing has been served. If it is demonstrated, through affidavit or other means, that a party is taking or is likely to take actions to undermine, delay, or obstruct the execution of a potential decree based on the award, or if the swift execution of the award is deemed necessary, the court may enact appropriate interim measures to address the situation.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Regarding domestic awards, the courts adopt a restrictive approach and interfere only when grounds to set aside are clearly and unambiguously made out. The courts abstain from delving into the merits in search of lacunas to set aside the award.

In *Tradhol International SA Sociedad Unipersonal vs. Shakarganj Limited*, PLD 2023 Lahore 621, the Lahore High Court Lahore clarified that the pro-enforcement policy is fundamental to the New York Convention, mandating a legal approach favouring the recognition and enforcement of foreign arbitral awards. The pro-enforcement policy ensures that courts limit their review to procedural matters without re-examining the substance of the dispute, thus promoting a swift and efficient recognition and enforcement process. This, in turn, benefits both parties and bolsters international trade and

commerce by providing stability and predictability. The pro-enforcement bias has been recognised in the latest judgment of the Supreme Court in *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd.*, 2024 SCMR 640. The court held that the misapplication of Pakistani law is not a valid ground to resist recognition and enforcement of a foreign award and that Article V provisions are discretionary, and the Courts may recognise and enforce the award even if some exceptions exist.

The court has the discretion whether or not to recognise and enforce an award annulled by the courts at the seat of arbitration. The courts shall likely follow the principle of comity, which requires countries to show respect and deference to legal systems and decisions of foreign courts.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The execution proceedings in cases of known assets of the award debtors may be concluded at the civil court between two to five years in cases where the process of attachment and sale is not interrupted by objection applications resisting attachment and sale.

In *Telecom Foundation v. Asko Enterprises*, [2020] CLC 1605, the Islamabad High Court held that the limitation period prescribed under Article 178 of the First Schedule to the Limitation Act, 1908, which is 90 days, begins from the 'date of service of notice of making of the award' issued by the arbitrator in accordance with Section 14(1) of the 1940 Act. In this case, the arbitrator did not issue any notices to the parties regarding the making of the award, and the plaintiff was not served with such notice. Consequently, in the absence of notice from the arbitrator, the limitation period for filing the award in court was not governed by Article 178 of the First Schedule to the Limitation Act, 1908. Instead, the court applied the residuary provision under Article 181 of the Limitation Act, 1908, which provides a limitation period of three years.

Article 178 does not apply to foreign awards as held in case of *Petrocin (Pvt.) Ltd v. Hyderabad Development Authority, Hyderabad*, [1990] MLD 1675. The residuary Article 181 also applies to the recognition and enforcement of foreign arbitral awards as well providing a limitation period of three years.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

In *Pakistan Television Corporation v. Noor Sanat Shah*, [2023] SCMR 616, the Supreme Court, in the matter of damages for tortious liability against a State entity, held that State Corporation cannot claim that it cannot be sued vicariously for the actions of its employees by invoking sovereign immunity noting that the defence of sovereign immunity and its application in Pakistan has been done away with by the Supreme Court in the case reported as *Pakistan through Secretary to the Government of Pakistan, Ministry of Railways and Communications, Karachi v. Muhammad A. Hayat* (PLD 1962 SC 28).

Under the State Immunity Ordinance, 1981 (Ordinance VI of 1981), a State enjoys general immunity from the jurisdiction of courts in Pakistan, with specified exceptions. Courts are mandated to uphold this immunity even in cases where the State does not appear in proceedings. Nonetheless, a State may waive this immunity by submitting to the court's jurisdiction through active participation in legal proceedings or through a prior agreement, provided that such participation is not solely for the purpose of claiming immunity or asserting property interests.

Exceptions to this general immunity include matters involving commercial transactions or obligations to be performed within Pakistan. This encompasses contracts for the supply of goods and services, financial transactions and other commercial engagements, excluding employment contracts or disputes strictly between States unless otherwise agreed in writing. Additionally, State immunity does not extend to proceedings concerning employment contracts executed or performed in Pakistan, subject to specific conditions related to nationality or residency, or mutual written agreements between the parties.

Further exceptions pertain to disputes involving State's interests in property located in Pakistan, issues concerning intellectual property rights such as patents and trademarks registered or protected in Pakistan, and membership in

Pakistani corporate or unincorporated bodies. Moreover, if a State consents in writing to arbitration, it is not immune from court proceedings related to that arbitration, provided such proceedings adhere to the terms stipulated in the arbitration agreement.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

Section 45 of the 1940 Act provides that the provisions of this Act shall be binding on the Government. There are no special rules that apply to enforcement of an award against a State or State entity.

(iii) Are there any requirements for arbitrations involving sovereign entities?

There are no requirements for arbitrations involving sovereign entities.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

As stated above, Pakistan has signed and ratified the Washington Convention and the Parliament has enacted the ICSID Act 2011 to give domestic law effect to the Washington Convention. At the time of writing this document, there are six multilateral treaties or free trade agreements with investment provisions in force to which Pakistan is a party.

(ii) Has your country entered into bilateral investment treaties with other countries?

At the time of writing this document, there are 31 bilateral investment treaties in force to which Pakistan is a party. Pakistan is one of the pioneers of the bilateral investment treaties as it entered into the first ever investment treaty with Germany which was signed on 25 November 1959 and entered into force on 28 April 1962.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

There are no court decisions in Pakistan in relation to intra-EU investor state arbitration awards.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The judgments of the superior courts are published on their official websites.

- Federal Constitutional Court of Pakistan: https://www.fccp.gov.pk/judgments
- Supreme Court of Pakistan: https://www.supremecourt.gov.pk/judgement-search/

- Islamabad High Court: https://mis.ihc.gov.pk/frmJgmnt?jgs=1
- Lahore High Court: https://data.lhc.gov.pk/reported_judgments/judgments_approved_for_reporting
- Sindh High Court: https://sindhhighcourt.gov.pk/Imp_Judgement_Orders.php
- Peshawar High Court: https://www.peshawarhighcourt.gov.pk/PHCCMS/reportedJudgments.php?action=search
- Balochistan High Court: https://bhc.gov.pk/resources/judgments
- Gilgit Baltistan Chief Court: https://www.gbcc.gov.pk/Reportedjudgments.aspx

The most popular electronic database for reference and research are:

- www.pakistanlawsite.com
- www.pljlawsite.com/

The authoritative books on the law of arbitration in Pakistan are as follows:

- Ikram Ullah, Arbitration Law of Pakistan, 2021, Kluwer Arbitration.
- Shaukat Mahmood, Nadeem Shaukat, *The Law of Arbitration, the Commentary on the Arbitration Act, 1940*, Legal Research Centre.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Pakistan International Dispute Weekend (PIDW) is held generally during the months of May/June each year hosted by the Chartered Institute of Pakistan (Pakistan Branch). The event is sponsored by local and international law firms and arbitral institutions and attended by notable arbitration practitioners and judges from Pakistan and abroad (UK, Singapore and UAE). PIDW details can be accessed at https://pidw.pk/.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is a prominent alternative to traditional court proceedings in resolving commercial disputes. It offers a private, often faster and more flexible resolution process compared to litigation.

In Pakistan, courts generally have a positive attitude towards arbitration and recognise its value in alleviating the burden on the judiciary. The legislative framework, though outdated, supports arbitration through progressive interpretation by the superior courts that facilitate and enforce arbitration agreements and awards.

However, despite this favourable environment, delays in issuing judgments in court proceedings is still a significant issue in Pakistan. When parties seek to enforce arbitration awards or require court intervention during the arbitration process, they can encounter prolonged delays in the judicial system. These delays can undermine the efficiency and attractiveness of arbitration, as they potentially negate the time and cost benefits that arbitration is supposed to provide.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

Mediation is increasingly being recognised and adopted in Pakistan as an effective alternative to traditional court proceedings. One of the key factors contributing to its rise in popularity is the judicial system's encouragement and the establishment of mediation centres. For instance, the Lahore High Court has taken significant steps to promote mediation for resolving corporate disputes, reflecting a broader trend towards alternative dispute resolution mechanisms in the country.

Moreover, the Islamabad High Court has recently inaugurated its first dedicated mediation centre, which underscores the judiciary's commitment to integrating mediation into the legal framework. This centre not only offers a platform for resolving disputes amicably but also helps in reducing the backlog of cases pending in courts. The training of judges and legal professionals as mediators is a crucial part of this initiative, ensuring that mediation is conducted by qualified individuals who can facilitate fair and effective resolutions.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The enactment of the 2017 Act has significantly streamlined the ADR process in Pakistan. The procedural rules of the CPC were concurrently updated to mandate the compulsory referral of disputes to ADR by the courts. In response to these legislative changes, various High Courts have begun implementing this updated rule by referring cases to mediation at the early stages of civil trials. This proactive approach aims to expedite the resolution of disputes and alleviate the burden on the judiciary, fostering a more efficient legal process.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

The Arbitration Law Review Committee of the Law and Justice Commission of Pakistan has recently issued the proposed bill on the Arbitration Act 2024 for stakeholder comments. The bill shall soon be presented in the Parliament through the Ministry of Law and Justice. If passed, the bill shall repeal the 1940 Act and provide for a modern arbitration law based on the principles contained in UNCITRAL Model Law.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

Third Party Funding is not common in Pakistan. In the case of *Riaz Ahmed v. Amtul Hameed Koser,* [1996] CLC 678, the Sindh High Court addressed the issue of third-party funding in litigation. The court held that an agreement to finance litigation in exchange for a share of the prospective spoils was contrary to public policy under Section 23 of the Contract Act, 1872, deeming it champertous. Specifically, the agreement in question, which involved conveying 30 per cent of an estate to the appellant, was considered potentially extortionate and unconscionable. The court emphasised that the proportion of benefits to the claim and the associated litigation costs were critical in determining the extortionate or immoral nature of such transactions. Consequently, the court ruled the agreement void and unenforceable, and the beneficiary of such an agreement could not be joined in the suit as a matter of right.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

The United Nations (Security Council) Act, 1948 (Act No XIV of 1948), empowers the Federal Government of Pakistan to implement measures in response to decisions made by the United Nations Security Council under Article 41 of the UN Charter. Article 41 involves non-military actions to enforce Security Council decisions. The Act authorises the government to publish orders in the Official Gazette that are necessary or expedient for applying these measures, including provisions with extraterritorial effects. It also allows for the creation of penalties for individuals who violate these orders, ensuring the effective application of the Security Council's directives.

Financial restrictions are also imposed by notifications under the Anti-Terrorism Act, 1997, Anti Money Laundering Act, 2010 and United Nations Security Council (Freezing and Seizure) Order, 2019.

In *Suleman v. Manager, Domestic Banking, Habib Bank Ltd.* [2003] CLD 1797, the Sindh High Court addressed the freezing of a trust's bank accounts by the State Bank of Pakistan on the grounds of alleged involvement in terrorist activities. The court found that it was neither appropriate nor possible for it to independently verify these allegations. It was noted that no actions had been taken against the petitioner or his co-trustee under the Anti-Terrorism Act, 1997,

which specifically deals with the suppression of terrorism and includes provisions for freezing accounts suspected of financing terrorism.

The court held that the general provisions of law could not be invoked to freeze accounts in such a manner that would deprive the affected party of the right to seek review or appeal, deeming such actions potentially mala fide. Furthermore, the court emphasised that UN Security Council resolutions affecting citizens' fundamental rights must be implemented by an official order published in the Gazette by the Federal Government, which had not been done in this case. The absence of material evidence of alleged terrorist financing and the lack of opportunity for the petitioner to contest the allegations further invalidated the action. The direction to freeze the accounts was thus declared unlawful and beyond the legal authority of the State Bank of Pakistan. The High Court allowed the constitutional petition and ordered the bank to honour the petitioner's cheques, restoring access to the trust's accounts.

The courts will give effect to sanctions which have been given domestic law effect by issuance of appropriate notifications under the relevant laws and generally not give effect to international economic sanctions as part of international public policy. Even the sanctions implemented by law could be assailed on violation of fundamental right to life, property, business and trade and movement enshrined in the Constitution of Pakistan, 1973. There are no court decisions in relation to the impact of sanctions on international arbitration proceedings.