

PAKISTAN

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

In Pakistan, the 1940 Arbitration Act ("**Arbitration Act**"), a colonial era legislation, is the main law governing the arbitration agreements, procedures, and awards. Pakistan has recently implemented the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2011 as the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act (the "**New York Convention Act**"). The law and practice of arbitration in Pakistan is in a state of flux, and various judges, lawyers, and academics have strongly suggested updating the arbitration laws and procedures prevailing in the country. At present, there are no major centres/institutions for arbitration in Pakistan.

Key places of arbitration in the jurisdiction	Lahore, Karachi, and Islamabad.
Civil law / Common law environment?	Common law jurisdiction.
Confidentiality of arbitrations?	Not expressly prescribed under the Arbitration Act; once the arbitral award is filed in court for enforcement, the confidentiality of the award is lost because court proceedings are open to the public.
Requirement to retain (local) counsel?	Not expressly provided.
Ability to present party employee witness testimony?	Not restricted.
Ability to hold meetings and/or hearings outside of the seat?	Permitted, unless the parties agreed otherwise.
Availability of interest as a remedy?	Section 29 of the Arbitration Act provides that where and insofar as an award is for the payment of the money, the court may in the decree order interest, from the date of the decree at such rate as the court deems reasonable, to be paid on the principal sum as adjusted by the award.
Ability to claim for reasonable costs incurred for the arbitration?	Permitted.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee arrangement is not permitted. Third party funding is not <i>per se</i> illegal and permitted where the funding arrangement is not against public policy, lead to vexatious litigation, or extortionate.
Party to the New York Convention?	Yes.
Other key points to note	ϕ
WJP Civil Justice score (2017-2018)	0.39

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Arbitration Act was introduced in 11 March 1940. The New York Convention Act was promulgated on 15 July 2011 (and applies to foreign arbitral awards issued after 14 July 2005).
UNCITRAL Model Law? If so, any key changes thereto?	No.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Jurisdiction under the Arbitration Act rests with the ordinary civil courts. Jurisdiction under the New York Convention Act is with the High Courts, which are constitutional courts one tier below the Supreme Court (which is the highest court).
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes.
Courts' attitude towards the competence-competence principle?	The courts generally accept that the arbitral tribunal may decide on its own jurisdiction, but there is no specific legislation to this effect.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	No. The grounds for annulment of awards under the Arbitration Act are wide and include questions relating to the misconduct of the arbitral proceedings and the legality of the award apparent on the face of the award.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The courts in Pakistan have not addressed this issue.
Other key points to note?	φ

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Pakistan's Arbitration Act is not based on the UNCITRAL Model Law. The Arbitration Act is a colonial era law and provides for conducting arbitration through the following three mechanisms:

- (a) Arbitrations without court intervention (Chapter II, Sections 3-19);
- (b) Arbitration with intervention of the court where there is no suit pending (Chapter III, Section 20); and
- (c) Arbitration in suits pending before the court (Chapter IV, Sections 21-25).

The Arbitration Act is the general legislation that governs, among other things, the interpretation of arbitration agreements, appointment and removal of arbitrators, powers of the courts in relation to arbitration proceedings, and setting aside and enforcement of arbitral awards. The Arbitration Act does not apply to foreign awards.

Apart from the Arbitration Act, the 1958 New York Convention is incorporated into the laws of Pakistan by way of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 ("**New York Convention Act**"). The New York Convention Act applies the Convention to the recognition and enforcement of foreign awards (i.e., awards issued in the States that are party to the New York Convention) in Pakistan.

The New York Convention Act and the Arbitration Act follow different enforcement procedures. The Arbitration Act empowers the civil courts, which are the courts of general first instance jurisdiction, to recognize and enforce arbitral awards. On the other hand, Section 3 of the New York Convention Act provides the exclusive jurisdiction to the High Courts (which are constitutional courts and one tier below the Supreme Court, the court of ultimate jurisdiction) to adjudicate and settle matters arising from the New York Convention Act. Further, Section 7 of the New York Convention Act limits the grounds on which recognition and enforcement of a foreign award can be refused and states that "*the recognition and enforcement of a foreign arbitral award shall not be refused except in accordance with Article V of the Convention.*"

The International Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1966 (the "**ICSID Convention**") has also been implemented in Pakistan through the Arbitration (International Investment Disputes) Act, 2011 ("**ICSID Convention Act**").

1.2 When was the arbitration law last revisited?

The arbitration law was last revisited in 2011, when the New York Convention was incorporated into the law of Pakistan through the New York Convention Act.

The last major amendment to the Arbitration Act was promulgated in 1981 and requires arbitrators or umpires to state the reasons of their awards in sufficient detail so as to enable a court to consider any questions of law arising out of the award (Section 26-A of the Arbitration Act).

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Pakistani courts have cited with approval the three-stage enquiry formulated in the English case of *Sulamerica v Ensea* [2012] EWCA Civ 638 to determine the law governing the arbitration agreement. Pursuant to this three-step test, the courts must determine: first, whether the parties expressly chose the law of the arbitration agreement; second, whether an implied choice by the parties has been made; and, last, in the absence of express or implied choice, the system of law with which the arbitration agreement has the closest and the most real connection (*Abid Associated Agencies v Areva* 2015 MLD 1646).

If there is no express agreement between the parties as to the law governing the arbitration agreement, the courts have held that the law which governs the main agreement shall also govern the arbitration agreement if the arbitration clause is stipulated as a part of the main agreement (*Hitachi Limited v Rupali Polyester* 1998 SCMR 1618).

In the event that the parties have executed a stand-alone arbitration agreement, the courts are likely to follow the three-step inquiry, as set out in *Abid Associated Agencies v Areva* 2015 MLD 1646, to determine the law of arbitration agreement, though there are no cases to this effect.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The arbitration agreement, even if it is embedded in the main contract, is considered to be separable and severable from the main contract and is not affected by frustration or repudiation of the main contract. Although there is no express statutory provision giving effect to the principle of separability, the Sindh High Court in *Lakhra Power v Karadeniz* 2014 CLD 337 held that the principle pursuant to which an arbitration agreement clause stipulated in a contract is deemed to be a separate agreement and remains operative and unaffected by any factor that vitiates the main contract is “well settled in Pakistan and of long standing”.

However, the Supreme Court of Pakistan’s judgment in *HUBCO v WAPDA* PLD 2000 SC 841 has cast some doubt on the principle of separability. In this case, the Supreme Court of Pakistan held that disputes relating to corruption and criminal acts, relating to the very existence of a valid contract, are not disputes under a contract and cannot be referred to arbitration according to public policy. The Supreme Court’s decision has been criticized by international arbitration practitioners.¹ Since this judgment has not been expressly overruled, it leaves some doubt on the status of the principle of separability under the law of Pakistan.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Section 2(a) of the Arbitration Act defines the arbitration agreement as “a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not”. Thus, the arbitration agreement must be in writing and must refer either to present or future disputes to arbitration.

The law does not prescribe any particular form for an arbitration agreement. For example, an arbitration agreement may be a clause in a contract between the parties or it may be a separate agreement to refer an existing dispute to arbitration. It is more common for the arbitration agreement to be stated as a clause in an underlying contract between the parties.

¹ See, e.g., Toby Landau, *International Arbitration and Pakistan’s State Responsibility: Redefining the Role of the Court*, available at <http://www.supremecourt.gov.pk/ijc/Articles/8/3.pdf>.

The New York Convention, as implemented in Pakistan, also requires that the arbitration agreement shall be in writing. Such writing can take various forms, including *"an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams."*

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

There are no reported cases in which the obligations of third parties to the contract (i.e., non-signatories) in relation to the arbitration agreement has been discussed. Notwithstanding the absence of clarity, the courts may be persuaded by arguments based on common law doctrines, such as agency, assignment, etc., for binding third parties to arbitration agreements.

2.5 Are there restrictions to arbitrability?

Pakistani courts have held that criminal matters cannot be referred to arbitration and that the Arbitration Act applies only to civil disputes (*Ali Muhammad v Bashir Ahmad* 1991 SCMR 1928). In *HUBCO v WAPDA* PLD 2000 SC 841, the Supreme Court found that the agreements were *prima facie* obtained through fraud and bribery, and, because they were marred by corruption and criminal actions, could not be referred to arbitration. The Supreme Court held that:

"The allegations of corruption in support of which the... circumstances do provide prima facie basis for further probe into [the] matter judicially and, if proved, would render these documents as void, therefore, we are of the considered view that according to the public policy such matters, which require finding about alleged criminality, are not referable to Arbitration."

Further, the courts have held that proceedings in relation to minority oppression under the 1984 Companies Ordinance ("**Companies Ordinance**")² cannot be stayed in light of an arbitration agreement (*WAPDA v Kot Addu Power Company Ltd* 2002 MLD 829). In *ORIX Leasing Pakistan v Colony Thal Textiles Ltd* PLD 1997 Lahore 443, the Lahore High Court held that the winding-up of a company cannot be the subject-matter of arbitration proceedings and stated that *"by its very nature the winding-up is a matter which has to be decided by [the] Court in exercise of its special statutory jurisdiction and cannot be subject matter of arbitration nor can order of winding-up be passed by [the] arbitrator"*. These decisions relied on the exclusive jurisdiction of the courts to decide the matters in relation to minority oppression and winding-up of a company and to grant relief under the relevant provisions of the Companies Ordinance (or the 2017 Companies Act, which has repealed and replaced the Companies Ordinance).

Although the courts have not developed a clear test of arbitrability, it is most likely that certain disputes would be considered non-arbitrable in line with the jurisprudence in other common law countries (such as India and the United Kingdom), which are persuasive authority for the courts of Pakistan.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of arbitration is inside of the jurisdiction?

If the place of arbitration is inside Pakistan, the arbitration is likely to be conducted under the Arbitration Act.

Pursuant to Section 34 of the Arbitration Act, the courts have the discretion to stay litigation if there is a valid arbitration agreement covering the dispute. For a stay to be granted under this provision, a party seeking the stay must apply for the stay *"at any time before filing a written statement [i.e., a statement of defense] or taking any other steps in the proceedings..."* In *Rana Muhammad Ikram v Punjab* 2005 CLC 206, the

² Companies Ordinance, 1984 was the general law applicable to the operation and regulation of companies in Pakistan. The Companies Ordinance, 1984 has been repealed and replaced by the Companies Act, 2017.

Lahore High Court held that the words “or taking any other steps in the proceedings...” mean “steps which are indicative of the intention of a party to the proceedings that the party was not going to raise objection to the jurisdiction of the Court or was not ready to refer the dispute to the Arbitrator or was willing to contest the suit before the learned Court through his act and conduct, express or implied.”

In *Uzin Export Import Enterprises v M Iftikhar & Company Ltd* PLD 1986 Karachi 1, the Sindh High Court endorsed the view that for the stay to be granted under Section 34 of the Arbitration Act, the following conditions must be met:

- (a) The proceedings must have been commenced by a party to an arbitration agreement against any other party to the agreement;
- (b) The legal proceedings sought to be stayed must be in respect of a matter agreed to be referred to arbitration;
- (c) The applicant for a stay must be a party to the legal proceedings and he must, as stated above, have taken no step after appearance in the legal proceedings. The applicant must also satisfy the court that he is (and was at the commencement of the proceedings) ready to properly conduct an arbitration;
- (d) The court must be satisfied that there is not sufficient reason why the matter should not be referred to an arbitration in accordance with the arbitration agreement.

In *K-Electric Limited v Pakistan* PLD 2014 Sindh 504, the Karachi High Court found a sufficient reason for not referring the dispute to arbitration because a constitutional question was directly and substantially in issue in the suit. Inconvenience to the parties to travel and present evidence may also be a sufficient reason for not referring a dispute to arbitration (*Eckhardt & Co v Muhammad Hanif* PLD 1993 SC 42).

3.1.2 If the place of the arbitration is outside of the jurisdiction?

If the place of arbitration is outside Pakistan, the court’s approach may vary depending on whether the governing law of the arbitration agreement is the law of Pakistan or a foreign law.

Where the governing law of the arbitration agreement is that of a country outside Pakistan and the place of arbitration is also outside Pakistan, the courts have held that the litigation must be stayed under Section 4 of the New York Convention Act (*Far Eastern Impex v Quest International* 2009 CLD 153).

The position is not entirely clear in cases where the arbitration agreement is governed by the laws of Pakistan and the place of arbitration is outside Pakistan. Before the promulgation of the New York Convention Act, courts had exercised their jurisdiction in relation to a stay of proceedings on a discretionary basis even where the place of arbitration was outside Pakistan under Section 34 of the Arbitration Act (*Uzin Export v M. Iftikhar* 1993 SCMR 866). Since certain provisions of the Arbitration Act are held to be applicable where the arbitration agreement is governed by the laws of Pakistan, the courts may apply Section 34 of the Arbitration Act to such agreements. This position is yet to be clarified by the courts of Pakistan.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

There are no reported cases where the courts have had to deal with injunctions by arbitrators to stay litigation proceedings. There are no legislative provisions empowering the arbitrators to issue injunctions to stay court proceedings. Despite the lack of clarity on this issue, it is likely that the courts would hold that the arbitrators do not have power to issue injunctions to stay court proceedings.

3.3 On what ground(s) can the courts intervene in arbitration seated outside of the jurisdiction? (Relates to anti-suit injunction but not only)

Courts in Pakistan have, at times, interfered in arbitration proceedings seated outside Pakistan. In *SGS v Pakistan* 2002 SCMR 1694, the Supreme Court of Pakistan restrained a party from taking any step, action, or measure to pursue, participate in or continue to pursue or participate in an ICSID arbitration. This judgment was based on the ground, amongst others, that the disputes between the parties had been referred to arbitration in Pakistan under the Arbitration Act.

In another case, a party to the litigation pending before the Supreme Court of Pakistan initiated two parallel proceedings before the ICC and the ICSID. The Supreme Court ordered that party to make a request to the ICC and the ICSID not to take further steps in the proceeding and to extend the period for the nomination of the arbitrator so that the Supreme Court of Pakistan, which was adjudicating the matter regarding the validity of the agreement between the parties, may dispose of that matter finally. The Supreme Court did not make specific orders in relation to the arbitral proceedings (*Maulana Abdul Haq Baloch v Government of Pakistan (Reko Diq case)* 2012 SCMR 402).

4. The Conduct of the Proceedings

4.1 Can parties retain outside counsel or be self-represented?

Parties can retain outside counsel or be self-represented. However, as is the case in litigation, the parties usually retain outside counsel for arbitrations rather than be self-represented.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify his outcome?

Pursuant to Section 11 of the Arbitration Act, the courts can remove an arbitrator where the arbitrator fails to use all reasonable dispatch in proceeding with the arbitration and making the arbitral award or where the arbitrator has misconducting himself or the proceedings (which include bias and partiality). The courts have held that allegations of bias, whether actual or possible, must be based on clear and cogent evidence, which has to be judged from a reasonable point of view and not on mere apprehension of any whimsical person (*Pak UK Association v Jordan* 2017 CLC 599).

In some cases, the courts have held that the mere fact that an officer or director of one party has been expressly chosen as arbitrator in the arbitration agreement is not a ground in and of itself to refer to the parties to arbitration (*Surriya Rehman v Siemens Pakistan* PLD 2011 Karachi 571). In other cases, the courts have disapproved of nomination by a party of its auditor as an arbitrator without disclosure of this fact to the other party (*Bata Shoe Co v Pakistan* PLD 1970 Karachi 784).

The Arbitration Act does not include any provisions requiring the arbitrators to make any disclosures to parties in relation to the conflicts of interest at the time of appointment.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Courts can intervene to assist in the constitution of the arbitral tribunal under Section 8 of the Arbitration Act in the following cases:

- (a) Where an arbitration agreement provides for arbitration by one or more arbitrators to be appointed by consent of parties, and all the parties do not, after disputes have arisen, concur with the appointment(s);

- (b) Where an appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be filled, and the parties or the arbitrators, as the case may be, do not fill a vacancy;
- (c) Where the parties or arbitrators are required to appoint an umpire and do not appoint him.

Before seeking court intervention, a party must serve a written notice to the other parties or the arbitrators, as the case may be, to concur in the appointment or appointments or in filling the vacancy. An application to the court can be made after fifteen days following service of this notice. The court may appoint the arbitrator(s) after giving the other party(ies) an opportunity to be heard. Section 8 of the Arbitration Act does not specify the timelines in which the court may appoint the arbitrator(s).

4.4 Do Courts have the power to issue interim measures in connection with arbitrations?

Pursuant to Section 41 of the Arbitration Act, courts have the power to issue interim measures. Courts in which the proceedings are pending are held to be competent and vested with the jurisdiction to pass interim orders as could be passed in a regular civil suit in the form of a temporary injunction or otherwise (*SGS v Pakistan* 2002 SCMR 1694).

4.4.1 If so, are they willing to consider *ex parte* requests?

Courts are willing to consider *ex parte* requests and issue injunctions on an *ex parte* basis under Section 41 of the Arbitration Act read with Order 39 Rules 1 and 2 of the Civil Procedure Code, 1908.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of the arbitration proceedings?

The law of Pakistan does not provide for confidentiality of arbitration proceedings.

4.5.2 Does it regulate the length of arbitration proceedings?

Section 3 of the Arbitration Act provides that an arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule of the Arbitration Act. The First Schedule requires that the arbitrators shall make their award "*within four months after entering on reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the court may allow*".

The failure to make an award within the statutory period does not operate as a revocation of an arbitrator's authority. Pursuant to Section 28 of the Arbitration Act, the court has the discretion to extend the time for issuing the award from time to time as it thinks fit, irrespective of whether the time to issue the award has expired or not and whether the award has been issued or not.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

The Arbitration Act does not state any express requirements in relation to the place where hearings and/or meetings may be held.

4.5.4 Does it allow for arbitrators to issue interim measures?

The Arbitration Act does not empower the arbitrator to issue interim measures.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

The 1984 Qanun-e-Shahadat Order, which sets out the law of evidence in Pakistan, does not apply to arbitration proceedings (Section 1(2) of the 1984 Qanun-e-Shahadat Order).

The Arbitration Act also does not regulate the arbitrators' right to admit/exclude evidence in any detail. The First Schedule of the Arbitration Act provides that the parties shall be deemed to have agreed to:

- (a) Submit themselves to be examined by the arbitrator(s) on oath or affirmation in relation to the matters in the arbitration;
- (b) Produce before the arbitrator(s) all books, documents, papers, accounts, writings, and documents within their power and possession; and
- (c) Do all other things which the arbitrator(s) may require during the arbitration proceedings (within the limits of the rules of natural justice).

Pursuant to Section 43 of the Arbitration Act, the courts are empowered to issue a summons to parties or witnesses whenever the arbitrators desire to examine them. A summons may be issued for the examination of a witness or production of documents. Failure to comply with the summons can result in the same penalties and punishments that would result as if the offence was committed against the courts.

4.5.6 Does it make it mandatory to hold a hearing?

There is no explicit provision in the Arbitration Act that mandates holding a hearing. However, the principles of natural justice (including the right to be heard) apply to an arbitration by virtue of which a hearing would be conducted, unless waived by the parties.

4.5.7 Does it prescribe principles governing the awarding of interest?

An arbitrator can award interest on just and equitable grounds even in the absence of a specific contract between the parties (*Pakistan Steel Mills v Mustafa Sons* PLD 2003 SC 301). Further, Section 29 of the Arbitration Act provides that where and insofar as an award is for the payment of the money, the court may, in its decree, order interest, from the date of the decree at such rate as the court deems reasonable, to be paid on the principal sum as adjusted by the award and confirmed in the decree.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Section 38(3) of the Arbitration Act states that the court may make such orders as it deems reasonable regarding the costs of an arbitration where any question arises about such costs and the award contains no sufficient provision concerning them.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

If an arbitrator has committed some misconduct related to his performance or the proceedings, a party may apply to the court for the removal of the arbitrator under Section 11 of the Arbitration Act.

Courts have held that, as a general principle, no action, and particularly no action of criminal nature, can be initiated against the arbitrators. However, where the arbitrators have misused the property retained by him as security and has overstepped his authority, a party can file a suit for damages (*Haq Nawaz v the State* 2005 YLR 1850).

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Generally, there are no concerns arising from potential criminal liability for any of the participants in an arbitration proceeding.

The presence of an arbitration agreement, however, does not bar criminal liability of the parties (*M. Aslam Zaheer v. Shah Muhammad* 2003 SCMR 1691). Where the same set of facts gives rise to both civil and criminal liability, a party may press criminal charges against the other party in a separate proceeding.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Section 26-A of the Arbitration Act states that the arbitrators shall "*state in the award the reasons for the award in sufficient detail to enable the Court to consider any question of law arising out of the award*". This implies that the parties cannot waive the requirement for an award to provide reasons.

In the event that the award does not state the reasons in sufficient detail, Section 26-A(2) of the Arbitration Act provides that the court shall remit the award to the arbitrators and fix the time within which the arbitrator or umpire shall submit the award together with the reasons in sufficient detail.

5.2 Can parties waive the right to seek the annulment of the award?

Parties cannot waive the right to seek the annulment (or setting aside) of the arbitral award. Such a waiver would contravene Section 28 of the Contract Act, 1872, which provides that an agreement in restraint of legal proceedings is void save for, amongst others, a contract to refer disputes to arbitration.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements that apply to the rendering of a valid arbitral award in Pakistan.

Section 14 of the Arbitration Act provides that an arbitral award must be signed and filed with the competent court. Section 14(1) states that the arbitrators shall sign the award once they have made it and shall give notice in writing to the parties of the making and signing thereof. Under Section 14(2), the arbitrators shall cause the award or a signed copy of it to be filed with the court upon the request of any party to the arbitration agreement or at the direction of the court, and the court shall thereupon give notice to the parties of the filing of the award.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

A party cannot appeal an arbitral award. Pursuant to the Arbitration Act, the party may seek three remedies against the arbitral award, which are as follows:

- (a) First, the court may order the modification or correction of an award under Section 15 of the Arbitration Act where:
 - (i) Part of the award rendered a decision on matters not referred to arbitration, is separable from the other parts of the award, and does not affect the decision of matters referred to arbitration;
 - (ii) The award is imperfect in form or contains obvious errors, which can be amended without affecting the decision; or
 - (iii) The award contains clerical mistakes or errors arising from an accidental slip or omission.
- (b) Second, the court may remit the award for the reconsideration of the arbitral tribunal under Section 16 of the Arbitration Act where:
 - (i) The award has not rendered a decision on a matter referred to arbitration;
 - (ii) The award has rendered a decision on a matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred;
 - (iii) The award is indefinite and incapable of execution; or

- (iv) The objection to the legality of the award is apparent on the face of the award.
- (c) Third, the award can be set aside under Section 30 of the Arbitration Act on the grounds amongst others, “that an arbitrator has misconducted himself or the proceedings” or that “an arbitral award has been improperly procured or is otherwise invalid”.

The Supreme Court has held that a court while hearing objections against an award in proceedings under Section 30 of the Arbitration Act could not sit as a court of appeal against an award and interfere on the merits (*President of Pakistan v Tasneem Hussain* 2004 SCMR 590).

Lastly, since Pakistan is a party to the New York Convention, the recognition and enforcement of a foreign arbitral award made in a state that is party to the Convention shall not be refused except in accordance with Article V of the New York Convention.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Different principles and procedures apply to the recognition and enforcement of local and foreign awards, as discussed below.

For local awards, pursuant to Section 14 of the Arbitration Act, once the award has been made, the arbitrators must sign the award and notify the parties in writing of the making of the award. Further, the arbitrators shall, at the request of any party, cause the award or signed copy of it to be filed in the Civil Court. The Court shall then give notices to the parties of the filing of the award.

Pursuant to Section 17 of the Arbitration Act, the court shall proceed to issue a judgment according to an award provided that the following conditions are satisfied:

- (a) The court sees no cause to remit the award or any of the matters referred to in arbitration for reconsideration to the arbitral tribunal;
- (b) No application for setting aside the arbitral award has been made within 30 days of the service of notice of filing of the award; and
- (c) If any application for setting aside the arbitral award has been made, it has been refused by the court.

After the court pronounces a judgment recognizing the award under Section 17 of the Arbitration Act, a decree shall follow and *“no appeal shall lie from such decree except on the ground that it is in excess of, or no otherwise in accordance with, the award”*.

For foreign awards, pursuant to the New York Convention Act, the High Court has the jurisdiction over matters covered by the New York Convention Act. A party applying for recognition and enforcement of a foreign arbitral award under the New York Convention Act shall, at the time of the application, furnish the following documents to the High Court in accordance with Article IV of the New York Convention:

- (a) Duly authenticated original award or a duly certified copy thereof;
- (b) Original arbitration agreement or a duly certified copy thereof;
- (c) Translation of the documents above, if required.

The New York Convention Act does not state the period of limitation for the enforcement of foreign arbitral awards. Thus, the general limitation period of six (6) years under the laws of Pakistan may apply to an application for recognition and enforcement of a foreign arbitral award. The courts in Pakistan have not yet ruled over this issue.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

The law does not provide for automatic suspension of the exercise of the right to enforce an award.

While there is no automatic suspension of the right to enforce an award, the court may suspend enforcement proceedings as an interim measure.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

There are no reported judgments in Pakistan on this issue. This issue has not been addressed in legislation or academic literature.

5.8 Are foreign awards readily enforceable in practice?

Pakistan's courts have endorsed the pro-enforcement bias of the New York Convention (*Abdullah v CNAN* PLD 2014 Sindh 349). Thus, in theory, foreign arbitral awards are readily enforceable in practice in Pakistan under the New York Convention Act. However, foreign awards have been enforced in Pakistan in limited cases (see, e.g., *FAL Oil Company Ltd v Pakistan State Oil Company Ltd* PLD 2014 Sindh 427).

6. Funding Arrangement

6.1 Are there restrictions to use of contingency or alternative fee arrangements or third party funding at the jurisdiction?

Contingency fee arrangements are not permitted in Pakistan under the 'Canons of Professional Conduct and Etiquette of Advocates'. Fixed or flat fees and hourly billings are permissible and widely used by lawyers in Pakistan.

The agreements to finance legal proceedings are not *per se* illegal in Pakistan (for being against the public policy of Pakistan). In *Muhammad Ramzan v Shamas-ud-din* 2012 CLC 1541, the Lahore High Court held that:

"Every agreement to finance litigation per se is not opposed to public policy rather there may be a case in which it would be in the furtherance of law, equity, justice and necessary to resist oppression... Such agreements are to be carefully scrutinized and when found to be unconscionable, unjust and inequitable, for improper object, against law, oppressive or leading to vexatious litigation, the same should be treated as against the public policy."

In a case where it was found that the agreement to finance litigation was extortionate, the Karachi High Court declared that the agreement was void and unenforceable (*Riaz Ahmed v Dr Amtul Hameed Koser* 1996 CLC 678).

7. Is there likely to be any significant reform of the arbitration law in the near future?

The following significant reforms of the arbitration law are being considered at present:

- (a) The Arbitration and Conciliation Bill, which is based on the UNCITRAL Model Law, was introduced in the Senate of Pakistan in January 2016.

The Arbitration and Conciliation Bill is based on the Arbitration and Conciliation Act, 1996 of India (before the amendments introduced to the Indian legislation in 2015). The Arbitration and Conciliation Bill aims to bring the arbitration law in Pakistan in line with the UNCITRAL Model Law and repeal the Arbitration Act, 1940.

The Arbitration and Conciliation Bill has not seen any significant movement and has been pending in the Senate since January 2016.

- (b) In June 2017, the Law and Justice Division of the Ministry of Law and Justice invited proposal, suggestions, and comments from the legal fraternity and stakeholders in relation to the revamping of the arbitration laws of Pakistan. However, it appears that no legislative proposal has yet been submitted by the Law and Justice Division before the legislature.
- (c) The Trade Dispute Resolution Organization has introduced the Trade Dispute Resolution Bill, which relates to 'Trade Disputes', which are disputes or complaints concerning, relating to, or arising out of the international export and import of goods and services conducted wholly or partially in, or otherwise conducted with, the territory of Pakistan.

The Trade Dispute Resolution Bill is presently being discussed by the National Assembly Standing Committee on Commerce and Textiles.

Apart from the above, several reforms by provincial legislatures are also being suggested in relation to amending the current arbitration law.

The Arbitration Act is usually considered by practitioners and judges as an outdated piece of legislation.³ The main objective of nearly all of the legislative proposals has been to update the arbitration laws of Pakistan in accordance with international best practices.

³ See, Faisal Naqvi, *Arbitration: a lost cause?*, The News (3 May 2017) available at: <https://www.thenews.com.pk/print/202077-Arbitration-a-lost-cause>.