



International Arbitration Comparative Guide

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International Arbitration Comparative Guide

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Pakistan



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1.1. What is the relevant legislation on arbitration in your jurisdiction? Are there any significant limitations on the scope of the statutory regime – for example, does it govern oral arbitration agreements?

The following laws govern arbitration in Pakistan:

- the Arbitration Act, 1940;
- the Arbitration (International Investment Disputes) Act, 2011; and
- the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral) Act, 2011.

The Arbitration Act is the prime statute relating to arbitration in Pakistan. The Arbitration (International Investment Disputes) Act was promulgated to implement the International Convention on the Settlement of Investment Disputes between States and Nationals of other States Act; while the Recognition and Enforcement Act was promulgated to implement the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Section 2(a) of the Arbitration Act defines an 'arbitration agreement' as "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not". Therefore, the act recognises only written agreements.

1.2 Does this legislation differentiate between domestic arbitration and international arbitration? If so, how is each defined?

The Arbitration Act does not differentiate between domestic and international arbitration. The Recognition and Enforcement Act provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. It is primarily a procedural law governing the recognition and enforcement of foreign arbitral awards.



1.3 Is the arbitration legislation in your jurisdiction based on the UNCITRAL Model Law on International Commercial Arbitration?

The Arbitration Act is not based on the UNCITRAL Model Law on International Commercial Arbitration.

1.4 Are all provisions of the legislation in your jurisdiction mandatory?

The following are the mandatory provisions under the Arbitration Act:

- the principles of natural justice – that is, the rule against bias and the right to a fair hearing (Article 10A of the Constitution of Pakistan);
- that an arbitration agreement be in writing (Section 2(a) of the Arbitration Act);
- that an arbitration agreement not be discharged, and the authority of an arbitrator not be revoked, by the death of any party. The arbitration agreement remains enforceable by or against the legal representative of the deceased (Section 6);
- the provisions pertaining to arbitration agreements to which an insolvent is a party (Section 7);
- the power of the court to appoint an arbitrator or umpire (Section 8);
- the provisions pertaining to the appointment of three or more arbitrators (Section 10);
- the power of the court to remove arbitrators or an umpire under certain circumstances (Section 11), and to replace the arbitrators with new arbitrators, including reducing the number of arbitrators from three to one during replacement (Section 12);
- that the award be signed and filed in the court with jurisdiction (Section 14);
- the power of the court to modify or correct the award (Section 15);
- the power of the court to remit the award to the arbitrators or umpire for reconsideration of certain matters (Section 16);
- court pronouncement of judgment and decree in terms of the award (Section 17);
- the provisions allowing an application seeking intervention of the court in enforcing the arbitration agreement (Section 20);
- that the award set out reasons in sufficient detail to enable the court to consider any question of law arising out of the award (Section 26A);
- the power of the court to award interest (Section 29);
- the provision on jurisdiction of the court (Section 31);
- the provision relating to the stay of court proceedings where there is an arbitration agreement (Section 34);
- the provision pertaining to the applicability of the Limitation Act 1908 (Section 37);
- the provision pertaining to disputes as to the arbitrator's remuneration or costs (Section 38);
- the provision pertaining to appeals from orders of the court (Section 39);
- the power of the court to grant interim measures (Section 41); and
- the power of the court to issue summons to the parties and witnesses for appearance before the arbitrator (Section 43).

1.5 Are there any current plans to amend the arbitration legislation in your jurisdiction?

No.

1.6 Is your jurisdiction a signatory to the New York Convention? If so, have any reservations been made?



Pakistan is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. It has made the following reservation: "Pakistan will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting State."

1.7 Is your jurisdiction a signatory to any other treaties relevant to arbitration?

Pakistan is a signatory to International Convention on the Settlement of Investment Disputes between States and Nationals of other States of the International Centre for Settlement of Investment Disputes.

2. Arbitrability and restrictions on arbitration

2.1 How is it determined whether a dispute is arbitrable in your jurisdiction?

Under the Arbitration Act, all civil matters that can form the subject matter of a civil suit are arbitrable (Section 2(c)). This includes all commercial and business disputes, but does not include criminal matters.

Further, civil matters for which any law in force has given exclusive jurisdiction to a special court or tribunal, or that involve a public interest element, are not arbitrable. Accordingly, the following matters are considered not to be arbitrable:

- certain rent matters over which only rent restriction tribunals or rent controllers exercise exclusive jurisdiction (2018 YLR 29);
- financial disputes arising from the Financial Institutions (Recovery of Finances) Ordinance 2001, over which only banking courts exercise exclusive jurisdiction (2016 CLD 920); and
- the winding-up of a company and other company matters over which only the high court, as a company court, has exclusive jurisdiction (PLD 1997 Lahore 443).

Based on the above principles, the following matters are also not arbitrable:

- family matters, including matrimonial matters and those involving the guardianship of a minor;
- matters involving the guardianship of disabled persons and their property, and other matters pertaining to mental health;
- succession matters;
- insolvency;
- matters relating to competition law, over which the Competition Commission of Pakistan has exclusive jurisdiction; and
- matters relating to IP rights (trademarks, copyright, patents and design rights), over which the IP tribunals have exclusive jurisdiction.

2.2 Are there any restrictions on the choice of seat of arbitration for certain disputes?

The parties are free to agree on the place of arbitration.

3. Arbitration agreement

3.1 What are the validity requirements for an arbitration agreement in your jurisdiction?



The term 'arbitration agreement' under Section 2(a) of the Arbitration Act means a written agreement to submit existing or future differences, to arbitration, whether an arbitrator is named therein or not. It is an essential ingredient of a valid submission to arbitration that the agreement to arbitrate be contained in a written document agreed by the parties or by their agent, or by agents duly authorised on their behalf (PLD 2003 Supreme Court 808; 1989 CLC 1666 Peshawar).

3.2 Are there any provisions of legislation or any other legal sources in your jurisdiction concerning the separability of arbitration agreements?

It is well established that an arbitration agreement is severable from the agreement of which it forms a part. The doctrine of separating an arbitration clause from the main agreement is well recognised in Pakistani jurisprudence. According to this jurisprudence, the arbitration clause in an agreement is an autonomous clause and survives even if the main contract is declared invalid or void ab initio. In *Lakhra Power Generation Company Limited v Karadeniz Powership Kaya Bey* (2014 CLD 337 Karachi), the main contract for rental power was declared void ab initio by the Supreme Court. Despite this, the high court held that the arbitration agreement was distinct and separable from the main contract and therefore survived the latter being declared void ab initio.

3.3 Are there provisions on the seat and/or language of the arbitration if there is no agreement between the parties?

The Arbitration Act confers significant flexibility on the parties to decide all pertinent issues relating thereto. The parties are free to choose:

- the applicable rules of procedure to be followed by the arbitrator for the conduct of the arbitration;
- the rules on the taking the evidence;
- the timeframe for furnishing the final award;
- the issue of interim award(s);
- the selection of the arbitrator(s); and
- all other matters, including the seat and language of the arbitration, as per the parties' mutual desires.

There are no specific provisions in the act providing for a default mechanism for the place of arbitration or the language of the arbitral proceedings. As a matter of practice, it is recognised that the arbitral tribunal has the power to determine such issues.

4. Objections to jurisdiction

4.1 When must a party raise an objection to the jurisdiction of the tribunal and how can this objection be raised?

Issues regarding the jurisdiction and competence of the arbitral tribunal are addressed by the court at the stage when the award rendered by the tribunal is filed in court to be made a rule of court, as under Pakistani law an arbitration award cannot be legally enforced until it is made a rule of court.

4.2 Can a tribunal rule on its own jurisdiction?



Subject to the language of the arbitration clause, the tribunal is permitted to rule on the question of its own jurisdiction. The competence-competence principle is well recognised by the Pakistani courts. In *Karachi Dock Labor Board v Quality Builders Private Limited* (2016 PLD 121 SC), the Supreme Court of Pakistan held that, “subject to the terms of reference an arbitrator(s) was the judge on both the points of fact and law, which also included the question to determine his own jurisdiction”. In *Gerry’s International Private Limited v Aeroflot Russian International Airlines* (2018 SCMR 662), the Supreme Court of Pakistan held that “when a claim or matters in dispute are referred to an arbitrator, he is the sole and final Judge of all questions, both of law and fact”.

4.3 Can a party apply to the courts of the seat for a ruling on the jurisdiction of the tribunal? In what circumstances?

A party may either raise objections before the tribunal or apply to the court to challenge the existence or validity of the arbitration agreement itself. Where a party recognises the arbitration agreement, but challenges the jurisdiction of the arbitrator based on a contravention of the law, the party can only raise objections before the arbitrator and subsequently challenge the award.

Objections should be raised in good time and before participation in the proceedings. In *Karachi Dock Labour Board v Quality Builders Limited* (PLD 2016 SC 121) the Supreme Court of Pakistan clarified that an arbitrator is a judge on points of both fact and law, which includes determining his or her own jurisdiction. However, this determination is always open to review by the courts. Although the Supreme Court recognised that a failure by a party to raise objections and participate in the proceedings will constitute a waiver to object to the jurisdiction of the arbitration, this principle will apply only to jurisdictional defects arising from non-compliance with the arbitration agreement, and not to those arising from non-compliance with the law, which cannot be waived. It held that an objection regarding the inherent jurisdiction of an arbitrator is a point of law – which can be raised at any stage – and an incurable defect.

5. The parties

5.1 Are there any restrictions on who can be a party to an arbitration agreement?

The Arbitration Act places no restrictions on who can be a party to an arbitration agreement. Any party that is competent to enter into a contract under the Contract Act, 1872 is competent to become a party to an arbitration agreement.

5.2 Are the parties under any duties in relation to the arbitration?

Section 9(b) of the Arbitration Act obliges a party to serve a clear 15 days’ notice on the other party for the appointment of an arbitrator, if that other party has failed to appoint the arbitrator. Once this notice has been served, the first party may appoint the new arbitrator under Section 9(a) of the act.

5.3 Are there any provisions of law which deal with multi-party disputes?

There is no provision in the Arbitration Act governing multi-party disputes. However, there is nothing to prevent a single arbitration reference between multiple parties by consent.

6. Applicable law issues

6.1 How is the law of the arbitration agreement determined in your jurisdiction?

The Arbitration Act confers flexibility on the parties to determine the law of the arbitration. The Supreme Court of Pakistan in *Societe Generale De Surveillance SA v Pakistan* (2002 SCMR 1694) held that the choice of seat can be determinative of the choice of governing law. The Supreme Court further held that where the seat of the arbitration was Islamabad, part performance of the agreement was to be made in the territory of Pakistan and the agreement had been executed in Pakistan, these factors were sufficient to hold that the parties intended the governing law of the arbitration to be the law of Pakistan.

6.2 Will the tribunal uphold a party agreement as to the substantive law of the dispute? Where the substantive law is unclear, how will the tribunal determine what it should be?

There is no codified rule that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of a dispute. However, there is judicial precedent that provides guidance. In *Muhammad Ishak Ali v Hiralal Seraogi* (PLD 1964 Dacca 637), the Dacca High Court (in then East Pakistan) – while relying on Dicey's Conflict of Laws – recognised that the expressed intention of the parties determines the 'proper law of the contract'.

In the absence of an agreement between the parties, the Supreme Court of Pakistan held in *Central Bank of India Ltd v Muhammad Islam Khan* (PLD 1962 SC 251) that the 'lex loci solutionis' (law of the place of performance) is the proper law of the contract. The Supreme Court further held that the proper law of the contract is that which has the closest connection to it, having regard to its terms and all the surrounding circumstances.

Accordingly, these judgments will serve as guidance for an arbitral tribunal.

7. Consolidation and third parties

7.1 Does the law in your jurisdiction permit consolidation of separate arbitrations into a single arbitration proceeding? Are there any conditions which apply to consolidation?

An arbitral tribunal does not have the power to consolidate separate arbitral proceedings; nor does the Arbitration Act provide for such circumstances. If all parties involved in separate proceedings agree to consolidate the proceedings with the consent of the arbitrator(s), there is nothing in the law to prevent this.

7.2 Does the law in your jurisdiction permit the joinder of additional parties to an arbitration which has already commenced?

The Arbitration Act includes no provisions on third-party participation in arbitration, such as joinder or third-party notice. However, there is no reason why a third party cannot join the arbitral proceedings with the consent of all parties. Third parties whose rights are affected by an award have the right to challenge the award, and the court has the power to consider any reason as to why the award should not be enforced.

7.3 Does an arbitration agreement bind assignees or other third parties?

The general rule is that third parties cannot be bound by an arbitration agreement. However, they may be bound under the agency principle. Arbitration agreements are treated as ordinary contracts and, accordingly, an arbitration agreement signed by an agent can be enforced against this principle. However, the instrument of agency is to be strictly construed, and general powers given to an agent will not include the authority to enter into an arbitration agreement (*Rashida Begum v Ch Muhammad Anwar*, PLD 2003 Lahore 522).

Under Section 6 of the Arbitration Act, an arbitration agreement is not discharged and the authority of an arbitrator is not revoked by the death of any party. The arbitration agreement remains enforceable by or against the legal representative of the deceased. Under Section 7 of the act, a receiver that adopts the contract of an insolvent is bound by the arbitration agreement in the contract.

8. The tribunal

8.1 How is the tribunal appointed?

The Arbitration Act provides for the appointment of the tribunal by the parties as per the arbitration agreement. In accordance with Section 3 read with the First Schedule to the act, unless a different intention is expressed in the arbitration agreement, the reference shall be to a sole arbitrator. Section 4 of the act further allows the parties to agree on an appointing authority to make the appointment.

Section 10(1) of the act provides that where the arbitration agreement stipulates that the tribunal will be composed of three arbitrators – one to be appointed by each party and the third by the two appointed arbitrators – the arbitration agreement shall have effect as though 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.

On the failure of the parties in specified circumstances, Section 8(2) of the act empowers the court to appoint an arbitrator or umpire.

8.2 Are there any requirements as to the number or qualification of arbitrators in your jurisdiction?

There are no requirements as to the number or qualifications of arbitrators in the Arbitration Act. However, unless the arbitration agreement provides otherwise, the reference shall be to a sole arbitrator (Section 3 read with the First Schedule to the Act). The First Schedule to the act also requires that if the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire no later than one month from the latest date of their respective appointments.

8.3 Can an arbitrator be challenged in your jurisdiction? If so, on what basis? Are there any restrictions on the challenge of an arbitrator?



On the application of any party to the reference, the court can remove an arbitrator or umpire who fails to use all reasonable dispatch in commencing and proceeding with the reference, and in making an award. The court may also remove an arbitrator or umpire who has misconducted himself or herself or the proceedings (Section 11 of the Arbitration Act). Misconduct includes not only moral turpitude and unethical conduct, but also 'legal misconduct', which can arise from an honest but erroneous breach, or from neglect of duty and responsibility by the arbitrator, causing a miscarriage of justice. The courts have recognised various circumstances that amount to misconduct, such as:

- failing to observe principles of natural justice;
- failing to deal with all issues in an award;
- making errors in the award; and
- acting in excess of the arbitrator's jurisdiction.

The courts also recognise the ground of bias for removal of an arbitrator.

The Supreme Court of Pakistan in *Brooke Bond (Pakistan) Limited v Government of Sindh* (PLD 1977 SC 237) held that the term 'misconduct' used in connection with arbitration does not imply anything in the nature of fraud or moral turpitude. In a judicial sense, the 'misconduct' of an arbitrator means his or her failure to perform his or her essential duties, resulting in a substantial miscarriage of justice between the parties.

8.4 If a challenge is successful, how is the arbitrator replaced?

Once an arbitrator has been removed, the court has the power under Section 12 of the Arbitration Act to appoint a sole arbitrator to replace him or her, or to order that the arbitration agreement shall cease to have effect with respect to the dispute.

8.5 What duties are imposed on arbitrators? Are these all imposed by legislation?

Unless the arbitration agreement provides otherwise, the arbitrator has the following powers (Section 13):

- to administer an oath to either party or to the witnesses examined before the arbitrator;
- to refer any question of law for the opinion of the court or to state the award in the form of a special case;
- to deliver an award which either is conditional in its operation or grants relief in the alternative;
- to correct accidental errors or mistakes in the award; and
- to require the parties to answer any interrogatories as deemed proper.

With regard to duties, an arbitrator is required to do the following:

- give sufficient notice to the parties;
- hear witnesses produced by the parties;
- record evidence in the presence of the parties; and
- act honestly and judicially.



In *Gerry's International Private Limited v Aeroflot Russian International Airlines* (2018 SCMR 662), the Supreme Court of Pakistan held that: "the arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The arbitrator was a tribunal selected by the parties to decide their disputes according to the law and so was bound to follow and apply the law, and if he did not do so he could be set right by the Court provided the error committed by him appeared on the face of the award."

8.6 What powers does an arbitrator have in relation to:

(a) Procedure, including evidence?

The arbitral tribunal is not bound by any strict rules of evidence. The Code of Civil Procedure, 1908 and the Qanun-e-Shahadat Order, 1984 (Law of Evidence) do not apply to arbitral proceedings. (As the arbitral tribunal is a domestic tribunal, it is not bound by the technical rules of procedure of, and strict compliance with, the Evidence Act: *Messrs Gul Ahmed Textile Mills Limited, Karachi v Messrs Starko Limited, Karachi* – 1981 CLC 1667 Karachi.) The tribunal must act fairly between the parties and fully consider the relevant evidence presented before it. The tribunal has power to administer an oath to the parties and witnesses, and to any party interrogatories if deemed necessary (Section 13 of the Arbitration Act). The tribunal has the power to order the production of documents within the possession or power of the parties, and to do all other things that are deemed necessary (First Schedule of the act).

(b) Interim relief?

Unless the arbitration agreement provides otherwise, Section 27 of the Arbitration Act empowers the arbitrators and umpire to make an interim award if they deem this necessary. In *Messrs Burjorjee Cowasjee & Co v New Hampshire Insurance Company* (1992 CLC 1269 Karachi), the high court held that arbitrators are not barred from making an interim award.

(c) Parties which do not comply with its orders?

As the Arbitration Act is silent on this, it follows that the tribunal is to seek court assistance in such circumstances.

(d) Issuing partial final awards?

The Arbitration Act uses the term 'interim award' at Section 27, and the arbitrator or umpire is empowered to issue such awards. In an earlier referred case (1992 CLC 1269 Karachi), the high court treated the interim award as not only binding, but also enforceable to the extent of the decided issue.

(e) The remedies it can grant in a final award?

There are no limits on the types of damages that are available in arbitration, as long as these are in accordance with the substantive law of the contract.

(f) Interest?

As held by the Supreme Court of Pakistan in *A Qutubuddin Khan v Chec Millwala* (2014 SCMR 1268), pre-award interest can be awarded by an arbitral tribunal only:

- if there is an express or implied agreement in this regard between the parties;
- on the basis of mercantile usage or statutory provisions; or
- on equitable grounds.

Post-award interest cannot be granted by an arbitral tribunal; only the court has the power to grant such interest under Section 29 of the Arbitration Act.

8.7 How may a tribunal seated in your jurisdiction proceed if a party does not participate in the arbitration?

As the Arbitration Act is silent in this regard, this is to be governed by and under the arbitration agreement between the parties. If the arbitration agreement contains no provisions in this regard, guidance can be sought from *Messrs Shahzad Ali Usmani Chohan v Managing Director, Sind Small Industries Corporation* (1989 CLC 450 Karachi), in which the high court held that where it appears from the circumstances of the case that a particular party is determined not to appear before the arbitrator, the arbitrator may proceed *ex parte* after issuing a notice and giving the party concerned a chance to change its mind.

8.8 Are arbitrators immune from liability?

The liability of arbitrators is not explicitly regulated in Pakistan. In *Haq Nawaz Khan v the State* (2005 YLR 1850), the Peshawar High Court quashed criminal proceedings against arbitrators who were accused of having misappropriated the subject matter (property) of an arbitration. The high court held that the decisions of the arbitrators could be challenged only under the Arbitration Act, and that no action – in particular, criminal action – could be initiated against the arbitrators. The court left open the question of whether a civil action for damages could be maintained against the arbitrators on the grounds of exceeding their authority.

It is unlikely that the courts would hold arbitrators liable for negligence in light of the remedies provided under the act (ie, challenge of the award or removal of the arbitrator). Where an arbitrator is removed for failure to proceed with the arbitration or for misconduct, he or she is not entitled to remuneration in respect of his or her services (Section 11 of the act).

9. The role of the court during an arbitration

9.1 Will the court in your jurisdiction stay proceedings and refer parties to arbitration if there is an arbitration agreement?

In respect of domestic arbitration, Section 34 of the Arbitration Act provides that where proceedings are initiated contrary to the arbitration agreement, a party can apply to the court for a stay of such proceedings in favour of arbitration. The stay application must be filed before filing a written statement or taking any other steps in the proceedings. The court has discretion to consider whether there are any reasons why the matter should not be referred to arbitration and may stay the proceedings.



In respect of international arbitration, Section 4 of the Recognition and Enforcement Act provides that a party to an arbitration agreement against which legal proceedings have been brought in respect of a matter that is covered by the arbitration agreement may, upon providing notice to the other party, apply to the court in which the proceedings have been brought to stay the proceedings. The court has a duty to refer the parties to arbitration, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The courts have held that, under Section 4 of the Recognition and Enforcement Act, they do not have discretion as compared to Section 34 of the Arbitration Act), and it is mandatory to refer the parties to arbitration if the arbitration agreement is valid and capable of being performed (*Far Eastern Impex v Quest International Nederland*, 2009 CLD 153).

9.2 Does the court in your jurisdiction have any powers in relation to an arbitration seated in your jurisdiction and/or seated outside your jurisdiction? What are these powers? Under what conditions are these powers exercised?

The courts have following powers under the Arbitration Act:

- to appoint an arbitrator or umpire under specified circumstances (Section 8);
- to appoint new or, in certain cases, a sole arbitrator (Section 9);
- to remove an arbitrator or umpire in certain circumstances (Section 11);
- to replace an arbitrator who has been removed by the court (Section 12);
- to modify the award (Section 15);
- to remit the award (Section 16);
- to pass judgment in terms of the award (Section 17);
- to pass interim orders (Section 18);
- to extend the timeframe for making an award (Section 28);
- to order the payment of interest (Section 29);
- to set aside the award (Section 30); and
- to stay the legal proceedings (Section 34).

9.3 Can the parties exclude the court's powers by agreement?

The parties cannot exclude the powers of the court by agreement.

10. Costs

10.1 How will the tribunal approach the issue of costs?

The costs of the arbitration are at the discretion of the arbitral tribunal. Where the tribunal does not allocate costs, the court has the power to do so. The general rule is that costs follow the event, so the unsuccessful party will bear the costs. The tribunal may decide otherwise based on the conduct of the parties and the outcome of the case. All fees and expenses of the arbitrator – legal fees and expenses, administrative fees, costs of experts and witnesses, and other expenses in connection with the arbitration – are recoverable. If there is any dispute regarding the arbitrators' remuneration and costs, the court will pass the necessary orders in this regard (Section 38 of the Arbitration Act).

10.2 Are there any restrictions on what the parties can agree in terms of costs in an arbitration seated in your jurisdiction?

No.

11. Funding

11.1 Is third-party funding permitted for arbitrations seated in your jurisdiction?

The Arbitration Act is silent on third-party funding. Third-party funding to a party to arbitration is open to challenge in the courts under the Contract Act, 1872, on the grounds that it is opposed to public policy – in particular, where the funding third party seeks a return from the amount to be awarded. In that case, the funding is covered under champerty, which is illegal in common law.

12. Award

12.1 What procedural and substantive requirements must be met by an award?

Section 14 of the Arbitration Act provides as follows:

- The award must be signed;
- The arbitrators or umpire must give notice in writing to the parties of the issue and signing of the award; and
- The amount of fees and charges payable in respect of award must be included in this notice.

Section 26A of the act provides that the arbitrators or umpire must state in the award the reasons for the award in sufficient detail to enable a court to consider any question arising from the award.

12.2 Must the award be produced within a certain timeframe?

Unless otherwise expressly provided, the arbitrators shall make their award within four months or within such extended timeframe as the court may allow. The umpire (unless otherwise expressly provided) shall make his or her award within two months of accepting the appointment or within such extended timeframe as the court may allow (First Schedule to the Act).

13. Enforcement of awards

13.1 Are awards enforced in your jurisdiction? Under what procedure?

The award cannot be enforced by itself. Judgment of the court is to be obtained in terms of Section 17 of the Arbitration Act.

The award must be filed in court and made a rule of court in order to be legally enforceable. Once an award is filed in court, the court issues notice to parties, inviting objections to making the award rule of court. The party against which the award is made may file an objection in court challenging the award on such grounds as are specified in Sections 30 and 33 of the act. After hearing both parties, the court will decide whether the award is to be interfered with by the court or whether it is to be made a rule of court. In *Gerry's International Private Limited v Aeroflot Russian International Airlines* (2018 SCMR 662) the Supreme Court of Pakistan held that: "While making an award the Rule of Court, in case parties had not filed objections, the Court was not supposed to act in a mechanical manner, like the post office and put its seal on it but had to look into the award and if it found patent illegality on the face of the award, it could remit the award or any of the matter(s) referred to arbitrator for reconsideration or set aside the same."



In the case of a foreign arbitral award, the party applying for recognition and enforcement must submit to the high court the following (Section 5 of the Recognition and Enforcement Act):

- the duly authenticated original award or a duly certified copy thereof; and
- the original agreement (between the parties) or a duly certified copy thereof.

If these documents are not in English, the applicant must produce an English translation of these documents certified by an official or sworn translator or by a diplomatic or consular agent.

In terms of Section 6 of the Recognition and Enforcement Act, the high court will recognise and enforce the foreign arbitral award in the same manner as a judgment of a court in Pakistan. A foreign arbitral award, which is enforceable under the Recognition and Enforcement Act, shall be treated as binding for all purposes on the parties and may accordingly be relied on by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Pakistan.

14. Grounds for challenging an award

14.1 What are the grounds on which an award can be challenged, appealed or otherwise set aside in your jurisdiction?

An award can be challenged on following grounds (Section 30 of the Arbitration Act):

- An arbitrator or umpire has misconducted himself or herself, or the proceedings;
- The award was made after the issue of a court order superseding the arbitration or after the arbitration became invalid under the act; or
- The award was improperly procured or is otherwise invalid.

A foreign arbitral award can be refused recognition and enforcement only in accordance with Section 7 of the Recognition and Enforcement Act. Section 7 provides that a foreign arbitral award shall not be refused recognition and enforcement, except in accordance with Article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. The convention is part of the Recognition and Enforcement Act (as a schedule) and, in terms of Section 8 of the act, will prevail in the event of any inconsistency between the act and the convention.

Article V of the convention provides that recognition and enforcement of a foreign arbitral award may be refused where the requesting party furnishes the competent authority (the high court) with proof of the following:

- The parties to the agreement were under some incapacity under the law applicable to them; or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country in which the award was made
- The party against which the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case

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- The award deals with a dispute not contemplated by or falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced
 - The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country in which the arbitration took place or
 - The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

Recognition and enforcement of an arbitral award may also be refused if the competent authority (high court) finds that:

- the subject matter of the dispute is not capable of settlement by arbitration under the law of Pakistan or
- recognition or enforcement of the award would be contrary to the public policy of Pakistan.

14.2 Are there any time limits and/or other requirements to bring a challenge?

An application to set aside an award or remit the award for reconsideration must be filed within 30 days of the date of service of notice by the court that the award has been filed by the arbitral tribunal (Article 158 of the First Schedule to the Limitation Act 1908).

14.3 Are parties permitted to exclude any rights of challenge or appeal?

The parties cannot exclude a challenge against an arbitral award that is otherwise applicable as a matter of law. The superior courts have repeatedly reiterated the view taken in *General Manager, Pakistan Railways v M/s OMR Expert Consultants* (PLD 1990 Supreme Court 800), in which the Supreme Court of Pakistan held that: “under Section 17 of the 1940 Act, it is the duty of the court to examine whether there was any reason for modifying the award or for setting aside the award notwithstanding that an affected party may have failed to file objection to the award on account of expiry of the limitation period or the parties to the arbitration proceedings may be in collusion and, because of that, they may not file any objection to a collusive award.”

In *Karachi Dock Labour Board v Quality Builders Private Limited* (2016 PLD 121 SC), the Supreme Court of Pakistan held that the “court is duty bound to examine the validity and legality of an award and it may sua sponte modify or set aside the award if the facts and dictates of justice so demand. The Court, in our opinion, cannot and certainly should not, remain dormant by merely affixing the judicial stamp on an award. The court is not part of an assembly line which has to churn out finished products mechanically without applying its judicial mind to the process involved”. Therefore, it is not possible to exclude a challenge to an arbitral award on the grounds provided under the law.



15. Confidentiality

15.1 Is arbitration seated in your jurisdiction confidential? Is a duty of confidentiality found in the arbitration legislation?

The Arbitration Act does not expressly ensure confidentiality. Further, under Section 14 of the act, an arbitrator is bound to file the award along with depositions and documents in the matter in court. These documents become public and there is no regulation for the court in restricting access to such documents or keeping the dispute itself confidential.

15.2 Are there any exceptions to confidentiality?

In view of question 15.1, there are no exceptions.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.



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