Legal Aspects of Doing Business in Pakistan

Introduction

Pakistan is a symbol of diversity with respect to its varied culture, climate, languages and geographical terrain. The country covers an area of 803,940 km2 and comprises of four provinces: Sindh, Punjab, Balochistan, and Khyberpakthunkhawa. Pakistan is the sixth most populous country in the world with an estimated population of 184.35 million, median age of 22 and a labour force of 60.52 million of which 3.5 million are unemployed.

Before independence in 1947, Pakistan was a part of the British Empire and the laws promulgated during the colonial days were based on principles of English common law which practice has continued. Pakistan courts follow the principle of stare decisis; decisions of the English Courts and the Commonwealth countries possess persuasive value and are referred to by the courts for deciding commercial cases. The judicial hierarchy is similar to the English system, the District Court as the original trial court, High Court of the Province as the court of appeal and the Supreme Court of Pakistan is the final court of appeal.

The Council of Islamic Ideology and the Federal Shariat Court have examined all the commercial statutes in the Pakistan Code and found them to be substantially in consonance with Shariah and recommended minor amendments in a few laws. For example, in the Evidence Act two special sections have been added; one provision to mandate that all agreements relating to financial or future obligations must be attested by two males or one male and two female witnesses and the other to permit the Court to allow production of any evidence that may have become available because of modern scientific devices or techniques. In the Sale of Goods Act, 1930 which incorporates the English principle of caveat emptor, a section has been added which states that the seller shall be under an obligation to inform the buyer of any defect in the goods sold at the time of the contract, except in a case where the defect is obviously known to the buyer.

Investment Policies

Investor friendly policies have been formulated to create an environment with an emphasis on opening up the economy and marketing the potential for foreign investment. Various incentives include full repatriation of capital, capital gains, dividends and profits. Foreign investment is also protected by:

- Foreign Private Investment (Promotion & Protection) Act, 1976; and

- Protection of Economic Reforms Act, 1992.

The current democratically elected government has attracted and facilitated foreign investors among others from China, United States of America, United Kingdom, Italy and Russia. As of April 2014, 420 new companies have been registered with the Securities and Exchange Commission of Pakistan (SECP) raising the corporate portfolio to 63,238. Foreign companies and associations are on top of the list of newly registered companies. Foreign investment has been directed through 20 new companies that include trading, construction, healthcare, IT, mining, real estate development, services, pharmaceuticals, food and beverages and tourism sector.

Incentives

Incentives for both foreign and local investors include:

- Five percent custom duty chargeable on import of plant, machinery and equipment not manufactured locally; and

- Sales tax at zero-rate on import of plant, machinery, and equipment which includes locally manufactured plant, machinery and equipment.

Import and Exports

Any person registered with the Income Tax Department who has a bank account with a local bank may export and import goods in any quantity except for certain specified items and agricultural produce.

The list of items that cannot be imported in the country are few and limited to the following:

(a) anti-Islamic, obscene or subversive literature;

(b) hazardous wastes as defined and classified in Basle Convention;

(c) any edible product not fit for human consumption;

(d) factory rejects and goods of job lot, stock lot, or substandard quality excluding the specified goods; and

(e) high explosive, radioactive substances, etc.

In certain cases the negative list also specifies the countries from where the goods cannot be imported or if imported the limitation therein.

Customs Duties and Sales Tax

Customs duties and sales tax are payable on imports of all goods (varying according to nature of goods). The importer has also to pay income tax at the rate of 4 percent on the total value of imported goods towards his full and final liability of income tax. No income tax is however payable on goods imported by an industrial concern that maintains proper books of account and files tax returns with the Income Tax Department.

Board of Investment (BOI)

To facilitate foreign and local investors the Government of Pakistan has established a Board of Investment ("BOI") to act as a "one-stop shop" and thereby facilitate contracts between potential investors and all government agencies. The 2013 Investment Policy aims to achieve FDI inflows to US$2.5 billion in 2014.

Export Processing Zone (EPZ)

The country also has Export Processing Zones (EPZ) where the investors enjoy:

- 100 percent ownership rights;
- 100 percent repatriation of capital and profits;
- No minimum or maximum limit for investment;
- Duty-free imports of machinery, equipment and material;
- No sales tax on input goods, including electricity and gas bills;
- Obsolete/old machinery can be sold on the domestic market of Pakistan after payment of applicable duties and taxes;

- No excise duty and no Custom duty on cement, steel, and any other material used in construction of buildings;

- Foreign Exchange Regulation of Pakistan is not applicable;

- Defective goods/waste can be sold in the domestic market after payment of applicable duties, at a maximum of up to three percent of total value of export;

- Domestic market of Pakistan is available on the same conditions as for imports of other countries;

- Only EPZ are authorised to collect presumptive tax at the time of export of goods at 1 percent (as revised on 1 July 2005), which would be final tax liability; and

- Production oriented labor laws, e.g. labor strikes are prohibited.

Work Visa

The sponsor/company registered in Pakistan, may apply for work visa by manually submitting the prescribed visa application form with the Board of Investment. In case views/comments/report are not received within the stipulated period of 4 weeks from the stakeholders, BOI issues recommendation for the grant of work visa to the Ministry of Interior for issuance of visa advice to Pakistan Missions abroad/Regional Passport Offices in Pakistan.

The visa application takes approximately 4 weeks to process. The work visa is issued for one year (multiple) validity, extendable on yearly basis. The maximum period that the visa is issued for is 2 years.

Taxation

Tax on income is governed by the Income Tax Ordinance, 2001. The Federal Government prescribes the rates of taxes in the Annual Budget in June every year. The rates prescribed for companies and individuals and for the Tax Year 2014 (Financial Year: 1 July 2014 to 30 June 2015) are as follows:

Companies The rate of tax imposed on the taxable income of a company is 34 per cent except a banking company which shall be 35 percent.

The rate of tax for a small company is 25 percent.

A “Small Company” means a company registered on or after the first day of 1 July 2005 under the Companies Ordinance, 1984 which, (i) has paid-up capital plus undistributed reserves not exceeding 25 Million Rupees; (ii) has employees not exceeding 250 any time during the year; (iii) has annual turnover not exceeding 250 Million Rupees; and (iv) is not formed by the splitting up or the reconstitution of a company already in existence.

Salaried Taxpayers The rate of tax on the income of Salaried Persons is as follows:

Salary income up to Rupees 400, 000 per annum is free of tax.

From Rs.400, 001 to Rs.750, 000 the rate is 5% on excess over Rs. 700, 000.

The rate of tax increases as the income increases.

From Rs.4,000,001 to Rs.7,000,000 the tax is Rs. Rs.600,000 + 27.5% of excess over Rs.4,000,000.

On salary over Rs.7, 000, 000 the tax is Rs.1, 425, 000 + 30% of excess over Rs.7, 000, 000.

Double Taxation

Pakistan signed an Agreement for the Avoidance of Double Taxation Treaty with the United Kingdom in 1955. The Income Tax Ordinance, 2001 and the rules aid in overcoming the technical hitches to ensure avoidance of double taxation and where appropriate provide relief from tax payable under the Ordinance.

Withholding Taxes

The Income Tax Ordinance, 2001 requires a payer to deduct and deposit tax at source from payments made to certain recipients. Withholding tax is payable on payment of salaries, payments to non-residents for technical services, payments for execution of contracts, supply of goods and services.

Law of Contract

The Contract Act, 1872 enacted by the British Parliament is based upon the general principles of English Common law. Besides chapters on formation of contracts, voidable contracts and void agreements, performance of contracts, consequence of breach of contract, it includes provisions relating to indemnity and guarantee, bailment and pledges and agency.

Transfer of Property

The Transfer of Property Act, 1882 deals with transactions relating to transfer of immovable property including sales, leases, mortgages, charges and transfers of actionable claims. All transfers of immovable property are subject to stamp duty and must be registered with the Registrar of Conveyances under the Registration Act.

Sale of Goods

The Sale of Goods Act, 1930 ("SOGA") contains provisions relating to the formalities of the contract of sale, the price, conditions and warranties, implied terms and conditions and transfer of title. It also provides the rights of unpaid seller against the goods, namely; unpaid seller's lien, stoppage in transit and suits for breach of sale contracts.

SOGA, except for one amendment, is in its original form and has not been updated by a modern statute like that of UK Supply of Goods and Services Act 1982. The supply of services is governed by the law of contract. The only amendment in SOGA is the addition of the obligation of the seller to point out the defects in the goods to the buyer.

Company Incorporation and Administration

Any person whether a national or a foreigner can incorporate a company under the Companies Ordinance 1984 by filing the requisite documents with the Securities & Exchange Commission of Pakistan ("SECP). Incorporation includes preparing charter documents i.e. Memorandum of Association and Articles of Association, registering the company and issuing a prospectus.

The procedures framed under the Ordinance permit seven or more persons to form a public company and two or more persons to form a private company. A company can take four forms: limited by shares; limited by guarantee; unlimited; or association not for profit.

Documents required to be filed for a limited company include: (a) Form 1 – Declaration of compliance with the pre-requisites for the formation of a company; (b) Form 21 – Notice of situation of registered office of the company; (c) Form 29 – Particulars of first directors of the company. For the incorporation of a public company additional documents are (i) Form 27 – List of persons consenting to act as directors; (ii) Form 28 – Consent of Directors.

If all documents are in order, it takes five to ten days to register a company.

Liability

Liability of members depends on the type of the company: for members of a company limited by shares, the liability is limited to the number of shares he holds; for member of a company limited by guarantee, it is limited by the memorandum of association as to the amount which each member respectively undertook to contribute to the assets of the company in the event of it being wound up. Members of unlimited companies have unlimited liability unless they cease to be a member.

Meetings

Under the Ordinance an Annual General Meeting (AGM) must be held within 18 months from the date of the companies' incorporation after which at least once every calendar year and within four months of the closing of its financial year with a maximum limit of 15 months after its last AGM. Notice is sent to the shareholders at least 21 days before the date of the AGM and for a listed company it is required to be published in a daily newspaper in English and daily newspaper in Urdu both being circulated within the province in which the company is listed with the Stock Exchange. All other general meetings other than the AGM are called extraordinary general meetings. Members may participate in the meeting either personally or through proxies.

Directors

The members elect directors in a general meeting. The office is held for a period of three years unless he resigns, is disqualified or otherwise ceases to hold office. Causal vacancy may be filled by the directors which shall be for the remainder of the term of the director in whose place he is appointed. The directors by resolution may (a) Issue Shares and Issue Debentures; (b) borrow moneys; (c) grant bonuses to employees; (d) approve half yearly or periodical accounts; and (e) declaration of interim dividends.

Branch Office

A foreign company has the option of establishing a branch office under Part XIV of the Companies Ordinance, 1984. Within 30 days of its establishment of its place of business the company should file the following documents with SECP:

- Certified copy of the company's Memorandum of Association and Articles of Association;

- Full address of company's registered or principal office;

- List of directors, chief executive, and secretary of the company;

- Return showing the name and all particulars including nationality of the principal officer of the company in Pakistan;

- Name and particulars of persons resident in Pakistan authorised to accept service on behalf of the company;

- Full address of office of the company which is deemed the principal place of business in Pakistan.

A foreign company shall annually submit to the SECP copies of the balance sheet, profit and loss account of the Head Office and the Branch Office together with a list of Pakistani members and debenture holders and the place of business of the Company in Pakistan. Documents should be filed within 45 days from date of submission of such documents or returns filed with the public authority of incorporation or within a period of six months of the date up to which the accounts are made. Under Section 454 of the Companies Ordinance, a foreign company shall maintain:

- At its principal office or the only place of business in Pakistan, a register of Pakistani members, debenture holders, directors and officers. This register is open for public inspection and copies may be supplied upon request;

- The country in which the company is incorporated in must be stated in every prospectus inviting subscriptions or debentures in Pakistan;

- Exhibit outside each place of business the company name and country in which company is incorporated;

- Mention on each official document and official communication the name of the company and of the country in which the company is incorporated;

A foreign company at its registered office shall maintain proper books of account showing:

- All sums of money received and spent and matters concerning these incomings and outgoings;

- All sales and purchases of goods;

- All assets and liabilities of the company.

Books of accounts of preceding 10 years shall be preserved in good order. The general requirements with respect to filing and maintenance of accounts and audit are almost identical for both local and foreign company. Private limited companies are only required to file an annual general return with regard to the company members and directors.

Liaison Office

A liaison representative or project office may also be set up by a foreign company. This shall have to be registered with the Board of Investment. Such offices are set up for promotion of export, to provide technical and market advice on products and to collect market information. They are not allowed to undertake any commercial or trading activity. After registration with the Federal Board of Revenue (Income Tax Department) and opening a bank account with a local bank any company can commence activities in Pakistan.

Acquiring a Company

A public or private Pakistani company may be acquired in two ways (1) by purchasing all its shares; or (2) purchasing majority shares in the company. Acquisitions are regulated by the Listed Companies (Substantial Acquisition of Voting Shares and Takeover) Ordinance, 2002 (Acquisition Ordinance). This ensures all investors a fair and equal opportunity with a transparent system for substantial acquisition of voting shares and takeovers of listed companies.

Section 4 of the Acquisition Ordinance provides that, any person who acquires voting shares which would entitle the acquirer to more than 10 per cent voting shares in a listed company shall disclose the aggregate of his shareholding in that company to the said company and to the stock exchange on which the voting shares of the company are listed within two working days of the receipt of intimation of allotment of voting shares or acquisition of voting shares. Any acquirer may acquire additional voting shares in any period of 12 months after acquisition of voting shares of more than 10 percent without making a disclosure in case the total acquisition does not exceed an aggregate of 25 percent.

Section 5, stipulates that no person may, directly or indirectly, acquire voting shares which (taken together with voting shares, if any, held by such person) would entitle such person to more than 25 per cent voting shares in a listed company or control of a listed company, unless such person makes a public announcement of offer to acquire voting shares or control of such company in accordance with the procedure laid down in statute and, before making the said announcement, such person has made a disclosure in the manner specified in Section 4.

The Securities and Exchange Commission of Pakistan (SECP) is the regulator empowered to enquire into any complaints received from investors holding not less than one-tenth of the total voting shares in the target company. In case of breach of any of the provisions of the SECP Act or refusal or failure to comply with any order or direction, SECP may, after giving the person an opportunity of being heard, impose a penalty up to Rs.1 million and in the case of continuing default a further sum of Rs.10, 000 for every day after issue of such order.

Competition Law

The Competition Act 2010 has been enacted to provide free competition in all economic and commercial activities, to improve economic efficiency and to protect consumers from anti-competitive behavior. The law seeks to prohibit abuse of market dominance, certain types of anticompetitive agreements, deceptive market practice, and mergers of undertakings that substantially reduce competition.

Competition Commission of Pakistan (CCP)

The Competition Commission of Pakistan has been established as a quasi-judicial, quasi-regulatory law enforcement agency with a specialised umbrella jurisdiction over the economy as a whole. Its duty includes ensuring free competition in all spheres of commercial and economic activities and to prevent or eliminate anti-competitive behavior.

Adopting a "carrot and stick" approach – the Competition Act provides for higher fines combined with imprisonment for non-compliance; on the other hand, the carrot is sweetened with sophisticated leniency powers with no fine or imprisonment under certain circumstances. The Competition Commission of Pakistan has legal powers to conduct searches and inspections in order to maintain the high standard of evidence for unearthing secret cartels.

Intellectual Property

Pakistan is a signatory to the Agreement on Trade Related Intellectual Property Rights, 1994.

Copyright

Pakistan is a member of the Berne Copyright Convention (1886) and the Universal Copyright Convention (1952); accordingly, all members of these Convention countries enjoy the same rights as Pakistan nationals.

The Copyright Ordinance, 1962 offers protection to literary, dramatic, musical and artistic works which include works of photography, cinematographies and all recordings. The protection of ownership of the copyright including computer programs and compilation of data under the Ordinance is limited to the author or publisher who is granted protection against possible infringement, provided the work has been registered with the Registrar of Copyright. The "owner of copyright" can avail both civil remedies and criminal prosecution. The works of international organisations and foreign works are specifically protected under Sections 53 and 54 of the Ordinance.

Trademarks

The Trade Marks Ordinance, 2001, has widened the scope of the law by including services marks, domain names, unfair competition, and misleading advertisements. Any person claiming to be the proprietor of a trademark used or proposed to be used by him may apply for the registration of the mark in the Register of Trade Marks. The period of registration is 10 years from the date of the application and may be renewed at the expiration of the 10 year period for another 10 years on payment of the requisite fee. In the case of infringement, the proprietor of the trademark is entitled to relief by way of injunction, damages, accounts and any other relief the court may deem fit. Applicants from a country signatory to the Paris Convention that apply for registration of the same mark within six months of such application are accorded priority in the registration of the mark.

Patent and Design

Under the Patents Ordinance, 2000 the term of the patent is 20 years from the date of filing and priority can be claimed within 12 months from the date of application filed in any one of the World Trade Organization member countries.

Labour Laws

Numerous laws have been enacted for the protection of workers, some significant statutes are stated below.

Industrial Relations Act, 2012

The Federal Government on 14 March 2012 enacted the Industrial Relations Act, 2012. The Act applies to all persons employed in any establishment or industry in the Islamabad Capital Territory or establishments carrying on business in more than one province. The National Industrial Relations Commission has also been established under the Act to:

- Register industry-wise trade unions in the Islamabad Capital Territory and federation of such trade unions and trans-provincial trade unions and federations at the national level;

- Determine a collective bargaining agent amongst industry-wide trade unions, and federation of such trade unions at the national level;

- Adjudicate and determine the industrial disputes which in the opinion of the Government are of national importance and are referred to it by the Government. The law also defines unfair labor practices on the part of workmen and employers that entail punitive action.

All four Provinces have also enacted similar Industrial Relations Acts to regulate trade union activities and resolution of disputes between employers and employees.

Industrial and Commercial Employment (Standing Orders) Ordinance, 1968

This statute provides several rights and benefits to the working class. Section 2(i) of the Ordinance defines a workman as 'any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward. The law provides that:

- Every workman at the time of his appointment, transfer, or promotion shall be provided with an order in writing showing the terms and conditions of his service.

- The employer shall have all permanent workman employed by him insured against natural death and disability, and death and injury arising out of contingencies which are not covered by the Workmen's Compensation Act, 1923.

- Every employer making profit in any year must pay to the workmen who have been in his employment in that year for a continuous period of not less than 90 days a bonus in addition to the wages payable to such workmen in accordance with the prescribed formula.

- Where the workmen are laid-off on account of failure of plant or stoppage of work due to fire, breakdown of machinery, stoppage of power supply, epidemic and civil commotion, etc. the employer shall pay them one-half their daily wages during the first 14 days as compensation and, in case of lay –off for an indefinite period, their services may be terminated by giving them due notice or pay in lieu thereof.

- The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged, or dismissed from service except by an order in writing which shall explicitly state the reason for the action taken. A workman is aggrieved by such termination or removal, he may approach the Labor Court for redress of his grievance, including that of reinstatement.

- The employer may dismiss a workman from service for misconduct by following the procedure prescribed in Standing Order Number 15.

- Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall receive, in addition to other benefits that he may be entitled to under the law or in accordance with the terms of his employment or any custom, usage, or, any settlement or an award of a Labour Court, gratuity equivalent to 30 day's wages, calculated on the basis of wages admissible to him in the last month of service for every completed year of service or any part thereof in excess of six months. However, where the employer has established a provident fund to which both the employer and workman contribute, no such gratuity shall be payable. In such event, a workman shall be entitled to receive the amount standing to his credit in the provident fund, including the contribution of the employer to such fund, even if he resigns or is dismissed from service.

- Where any workman is to be retrenched and belongs to a particular category of workmen, the principle of first come, last go shall be followed.

Employees’ Old Age-Benefit Act, 1976 (Pension)

The Employees’ Old Age-Benefit Act, 1976 stipulates that every employer of an establishment wherein five or more persons are employed by the employer directly or through any other person or were so employed on any day during the preceding twelve months shall pay contribution every month at the rate of five percent of the employee wages and the employee shall contribute one percent of his monthly wages to Employees Old Age Benefit Institution. Only the owner, the directors and the person who has ultimate control over the affairs of the industry or establishment are excluded. On attaining the age of 60 years or 55 years, in the case of a female or early retirement or on account of invalidity, the insured person is paid a monthly pension calculated on the basis of the number of years of insurable employment which shall not be less than Rs.2, 000 per month.

Workmen’s Compensation Act, 1923

Workmen’s Compensation Act, 1923 provides for compensation for personal injury suffered by a workman by accident arising out of and in the course of his employment and according to the nature of injury and the percentage of loss of earning capacity specified in the Schedule. The Workmen’s Compensation Commissioner decides disputes relating to delay, non-payment, or any dispute in respect of payment.

Social Security Ordinance, 1965

The provisions of the Ordinance are applied by notification by the Provincial Governments except in the Sindh Province where it is applicable to the employees, earning wages up to Rs.10,000 per month, of all establishments in the province where five or more persons are working.

All employees and their family and dependents are entitled free medical treatment during sickness and wages for a period of up to six months during absence of work. The employer is required to pay to the Institution contribution on the wages paid at the rate of six percent per month.

Minimum Wages

The minimum wage for unskilled workers in all the Provinces is Rupees 10,000 per month from 1 July, 2013.

Managerial Staff

The services of employees who fall beyond the category of workmen are governed by the law of master and servant in accordance with the terms of their Employment.

Information, Communication Technology

Pakistan has one of the highest development rates in mobile telephone sector. At the end of 2013 there were 132 million mobile phone users which are increasing at a very fast rate.

Plant, machinery, and equipment of information technology projects are importable at customs duty of zero percent, if not manufactured locally and as certified through the Federal Board of Revenue by the Facilitation Committee of the Board of Investment Islamabad, which includes ‘Telecommunication, i.e., email/internet/electronic information services, cellular mobile telephone services, fax services, voice mail services, card pay phone services etc.’

In April 2014 the Federal Government granted 3G and 4G licenses to China Mobile, Mobilink, Telenor, and Ufone and earned non tax revenue of $1.11 billion from the four foreign entrepreneurs competing for business in the mobile phone sector. The new technology will give impetus to branchless banking and mobile banking business and applications.

Banking Law

The State Bank of Pakistan (“SBP”), the Central Bank, regulates the credit system, issues bank notes and keeps reserves to secure monetary stability. SBP issues circulars and Prudential Regulations for banks to regulate their credit and risk exposures. It also prescribes guidelines for loan facilities, and sets criteria for management.

All banks in Pakistan have switched to electronic banking which includes phone and internet banking and ATMs.

Banker’s Lien

Under the provisions of the Contract Act all bankers have a right to retain as security for a general balance of account any goods bailed to them unless agreed to the contrary.

Letters of Credit

INCOTERMS 2010 are used in all contracts relating to import and export of goods.

Islamic Banking

Pursuant to the Government's decision the banks shifted the Banking System to Islamic modes of financing from 1 January 1985 which are (i) Purchase of goods by banks and their sale to clients at appropriate Mark Up and price on deferred payment basis; (ii) Purchase of trade bills; (iii) Purchase of movable or immovable property by banks from clients with Buy-Back Agreement; (iv) Leasing; (v) Hire-purchase; (vi) Musharika or profit and loss sharing; (vii) Equity participation and purchase of shares; and (viii) Rent sharing etc. The charge of mark-up was challenged in the High Court as Un-Islamic on the ground that it was another name for interest; however, the Court held that mark-up referred to in the various modes of financing is based upon agreement between the parties and therefore cannot be equated with interest.

The banking system in practice is substantially similar to the conventional banking but with some Shariah features. A foreign investor need not worry about the form because the modes of financing and loans are not very different and especially in foreign trade all banks follow the international banking procedures and practices.

For the standardisation and harmonisation of Shariah practices in Islamic banking industry of Pakistan, SBP has issued essentials of permissible modes of Islamic banking and finance in Pakistan. Moreover, SBP has also allowed use of AAOIFI Shariah Standards wherever SBP essentials are not available. AAOIFI is the global standard setting body which issues accounting, governance and Shariah standards which are followed by majority of jurisdictions offering Islamic banking and finance.

Arbitration

Arbitration Act 1940 The Arbitration Act, 1940 is based upon the provisions of the English Arbitration Act of 1934, with some changes. After the insertion of Section 26-A in 1981, the arbitrator is now required to state reasons for the award in sufficient detail to enable the court to consider any question of law arising out of the award. The act applies to: (1) arbitration without the intervention of court; (2) arbitration through the court when no suit is pending; (3) arbitration in suits and (4) statutory arbitrations. The arbitration agreement must be in writing, but it need not be signed; however, it must be acknowledged. An unsigned document containing the terms agreed to by both parties is sufficient.

Arbitrators The arbitrator is required to render his award within four months from the date of entering the reference which may be extended by the court or by consent of the parties. The arbitrator conducts the proceedings in accordance with procedure laid down in the Arbitration Act and the general procedures of the Civil Procedure Code.

Arbitral Awards If the award debtor fails or refuses to honor the award the successful party may file the award in court to make it Rule of Court. After hearing the parties the court will pass a decree in terms of the award, such decree is executed like any other decree of the court. An award may not be set aside except where (i) arbitrator has misconducted himself or the proceedings; (ii) award has been made after a court order superseding an award; or (iii) award has been improperly procured or is otherwise invalid.

After the award has been made Rule of Court, it shall be enforced like any other decree (Final Judgment) of the court.

Enforcement of Foreign Awards Pakistan signed the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1958. The New York Convention was translated into statute in 2011 as the 'Recognition an Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011'. Consequently, an award made in a state signatory to the New York Convention can now be enforced in Pakistan.

Section 4(2) of the Recognition an Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, provides that in the presence of an arbitration agreement the Court has no discretion and it is obliged to stay the proceedings and direct the plaintiff to proceed to arbitration in accordance with the agreement except where the arbitration agreement falls within the three specified classifications; namely, that the arbitration agreement is (i) null and void; (ii) inoperative; or (iii) incapable being performed. There are several judgments wherein the High Court of Sindh has stayed court proceedings and directed the plaintiff to seek his remedy by referring the dispute to international arbitration in accordance with the agreement.

Disclaimer: This is a brief overview of the legal principles applicable to most business transactions or activities in Pakistan. The intention is to provide only a brief insight into the legal aspects and reference should be made to qualified Pakistani lawyers for any particular transaction or business.

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