

TO BE INTRODUCED IN THE NATIONAL ASSEMBLY**A
BILL**

to consolidate and amend the law relating to domestic arbitration and international commercial arbitration and for matters connected therewith or incidental thereto

WHEREAS the practice of arbitration has greatly developed since the promulgation of the Arbitration Act, 1940;

AND WHEREAS the Arbitration Act, 1940 needs to be repealed and replaced by a modern statute which provides for the speedy resolution of disputes, reduces judicial intervention in arbitration, caters for institutional arbitration, and recognizes the principle of party autonomy;

AND WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985 (and amended the said text in 2006);

AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the said Model Law makes significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS the provinces of Sindh, Balochistan, Punjab and Khyber-Pakhtunkhwa have passed resolutions authorising Parliament and the Federal Government to act in this regard;

AND WHEREAS it is expedient to make this law respecting arbitration, taking into account the aforesaid Model Law and the considerations noted above.

It is hereby enacted as follows:-

PRELIMINARY**1. Short title, extent, and commencement.**

- (1) This Act shall be called the Arbitration Act, [*].
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

CHAPTER I

General provisions

2. Definitions.

(1) In this Act, unless the context otherwise requires,—

- (a) **“arbitration”** means any arbitration whether or not administered by an arbitral institution;
- (b) **“arbitration agreement”** means an agreement referred to in section 8;
- (c) **“arbitral award”** includes an interim award;
- (d) **“arbitral institution”** means a permanent organization with a set of its own arbitration rules which has been duly notified by the Ministry of Law and Justice as a recognized arbitral institution.
- (e) **“arbitral tribunal”** means a sole arbitrator or a panel of arbitrators and, in the case of an arbitration conducted under the rules of an arbitral institution providing for appointment of an emergency arbitrator, includes such emergency arbitrator;
- (f) **“commercial”** includes, but is not limited to, matters arising from all relationships of a commercial nature, whether contractual or not, such as any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and, carriage of goods or passengers by air, sea, rail or road;
- (g) **“Competent Court”** means—
 - (i) in relation to international commercial arbitration, the High Court having jurisdiction under this Act;
 - (ii) where relief is sought under either section 10 or section 29 in relation to arbitral proceedings seated outside Pakistan, the High Court having jurisdiction under this Act; and
 - (iii) in all other cases, the District Court having jurisdiction under this Act.
- (h) **“District Court”** has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (Act V of 1908) but does not include any court of a grade inferior to the court of an Additional District Judge and also does not include a High Court in the exercise of its ordinary original civil jurisdiction.
- (i) **“international arbitration institution”** means an arbitral institution whose head office is registered outside Pakistan.
- (j) **“international commercial arbitration”** means an arbitration relating to commercial matters arising out of legal relationships, whether contractual or not, and where at least one of the parties is—

- (i) an individual who is a national of, or legally entitled to permanent residence in, any country other than Pakistan; or
- (ii) a body corporate incorporated in any country other than Pakistan; or
- (iii) an association or a body of individuals whose central management and control is exercised in any country other than Pakistan; or
- (iv) the Government of a foreign country;

Provided that all arbitrations:

- (i) governed by the rules of an international arbitral institution or,
- (ii) in which the parties have expressly stipulated that the substantive law of the contract shall be the laws of a country other than Pakistan; or
- (iii) where the parties have agreed, whether before or after a dispute arises, to have the matter treated as an international commercial arbitration;

shall be deemed to be international commercial arbitrations.

(k) **“legal representative”** means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(l) **“party”** means a party to an arbitration agreement.

(m) **“seat of the arbitration”** means the juridical seat of the arbitration designated—

- (i) by the parties to the arbitration agreement, or
- (ii) by any arbitral or other institution or person vested by the parties with powers in that regard, or
- (iii) by the arbitral tribunal under section 22(2).

3. Scope of application of provisions.

(1) Except as is expressly provided to the contrary, the provisions of this Act apply only where the seat of the arbitration is in Pakistan.

(2) Unless otherwise agreed by the parties, the powers conferred by the following sections apply even if the seat of the arbitration is outside Pakistan or if no seat has been designated or determined—

- (a) section 10;
- (b) section 29; and,
- (c) clause (b) of sub-section (1) of section 42.

(3) Section 18 and section 45 apply where the law applicable to the arbitration agreement is the law of Pakistan even if the seat of the arbitration is outside Pakistan or has not been designated or determined.

(4) This Act shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(5) Except for sub-section (1) of section 45, section 46 and section 49, this Act shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Act are inconsistent with that other enactment or with any rules made thereunder.

(6) Subject to the provisions of sub-section (1) and sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between Pakistan and any other country or countries, this Act shall apply to all arbitrations and to all proceedings relating thereto.

(7) With the exception of section 30, where this Act leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an arbitral institution, to determine that issue.

(8) Where this Act—

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,

that agreement shall include any arbitration rules referred to in that agreement.

(9) With the exception of clause (a) of sub-section (1) of section 27 and clause (a) of sub-section (2) of section 37, where this Act refers to a claim, it shall also apply to a counter-claim, and where it refers to a defence, it shall also apply to a defence to that counter-claim.

4. Receipt of written communications.

(1) Unless otherwise agreed by the parties,—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) Unless otherwise agreed by the parties, a written communication sent electronically is deemed to have been received if it is sent to the electronic mailing address of the addressee.

(3) The communication is deemed to have been received on the day it is so delivered.

(4) This section does not apply to written communications in respect of proceedings of any court or judicial authority.

5. Waiver of right to object.

A party who knows that—

- (a) any provision of this Act from which the parties may derogate, or
- (b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

6. Extent of judicial intervention.

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Act, no court or judicial authority shall intervene except where so provided in this Act.

7. Administrative assistance.

In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable person or arbitral institution.

CHAPTER II

Arbitration agreement

8. Arbitration agreement.

(1) In this Act, “*arbitration agreement*” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(5) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

Explanation: for the purposes of this section, “electronic communication” means any communication that the parties make by means of data messages; and, “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(6) An arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(7) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

(8) The parties are free to enter into an arbitration agreement in respect of disputes which are pending before a court or judicial authority.

9. Stay of legal proceedings.

(1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counter-claim) in respect of a matter which, under the arbitration agreement, is to be referred to arbitration may apply to the court or judicial authority in which the proceedings have been brought to stay the proceedings so far as they concern that matter.

(2) An application under this section may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.

(3) An application under this section shall not be made if a party has already submitted their first statement on the substance of the dispute (other than a pleading asserting that the court does not have jurisdiction in the proceedings).

(4) On an application under this section the court or judicial authority in which the legal proceedings are pending shall grant a stay and refer the parties to arbitration unless it finds that *prima facie* no arbitration agreement exists.

(5) If the court or judicial authority refuses to stay the legal proceedings, any provision (whether in the arbitration agreement or otherwise) that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

(6) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before a court or judicial authority, an arbitration may be commenced or continued and an arbitral award made.

10. Interim measures by Competent Court.

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before an application for enforcement is filed under section 41, apply to the Competent Court—

(a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(b) for an interim measure of protection in respect of any of the following matters, namely:—

(i) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(ii) securing the amount in dispute in the arbitration;

- (iii) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (iv) interim injunction or the appointment of a receiver;
- (v) interrogatories and discovery of documents;
- (vi) maintaining or restoring status quo pending determination of the dispute;
- (vii) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party
- (viii) enforcing any obligation of confidentiality —
 - (A) that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other document;
 - (B) under any law or rule of law; or
 - (C) under the rules of arbitration (including the rules of an arbitral institution) agreed to or adopted by the parties.
- (ix) such other interim measure of protection as may appear to the Competent Court to be just and convenient,

and the Competent Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, the Competent Court passes an order for any interim measure of protection under sub-section (1):

- (a) the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Competent Court may determine; and,
- (b) Unless the Competent Court provides to the contrary, an order made by it under sub-section (1) shall cease to have effect in whole or in part on the order of the arbitral tribunal having power to act in relation to the subject-matter of the order.

(3) Once the arbitral tribunal has been constituted, the Competent Court shall not entertain an application under sub-section (1), unless the Competent Court finds that circumstances exist which may not render the remedy provided under section 19 efficacious.

(4) Where Admiralty proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the court granting the stay may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest—

- (a) order that the property arrested be retained as security for the satisfaction of any arbitral award given in the arbitration in respect of that dispute, or

(b) order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such arbitral award.

11. Public policy and arbitrability.

- (1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.
- (2) The fact that any law confers jurisdiction in respect of any matter on any court of law or other judicial authority but does not refer to the determination of that matter by arbitration does not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

CHAPTER III

Composition of arbitral tribunal

12. Number of arbitrators.

- (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.
- (2) If the parties have not determined the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.
- (3) If the parties have determined an even number of arbitrators, it shall be presumed that the parties have agreed that another arbitrator is to be appointed by the arbitrators determined by them.

13. Appointment of arbitrators.

- (1) Unless otherwise agreed by the parties, a person of any nationality may be an arbitrator.
- (2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
- (3) Subject to any agreement between the parties, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.
- (4) If the appointment procedure in sub-section (3) applies and—
 - (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
 - (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the High Court having jurisdiction under this Act or any person or arbitral institution designated by such High Court.

Explanation.— In an arbitration with five or more arbitrators, the provisions of sub-sections (3) and (4) shall apply *mutatis mutandis*.

(5) Subject to any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the High Court having jurisdiction under this Act, or any person or institution designated by such High Court.

(6) Where, under an appointment procedure agreed upon by the parties,—

- (a) a party fails to act as required under that procedure; or
- (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the High Court having jurisdiction under this Act, or any person or institution designated by such High Court, to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) While considering any application under sub-section (4) or sub-section (5) or sub-section (6), the High Court shall confine itself to examination of the *prima facie* existence of an arbitration agreement.

(8) The designation of any person or institution by a High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by that High Court.

(9) A decision on a matter entrusted by sub-section (5) or sub-section (6) or sub-section (7) to a High Court or a person or institution designated by that High Court is final and no appeal shall lie against such decision.

(10) A High Court or a person or institution designated by that High Court shall, before appointing an arbitrator, seek disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 14, and have due regard to—

- (a) any qualifications required for the arbitrator by the agreement of the parties; and
- (b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(11) In the case of appointment of a sole or third arbitrator in an international commercial arbitration, a High Court or the person or institution designated by that High Court, if so requested by one of the parties, shall appoint an arbitrator of a nationality other than the nationalities of the parties (where the parties belong to different nationalities).

(12) A High Court may, in the exercise of its powers to make rules under section 52, make such provision as it deems appropriate for dealing with matters entrusted to it by sub-section (4) or sub-section (5) or sub-section (6).

(13) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different High Courts or their designates, the High Court or its designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(14) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the High Court or the person or institution designated by the High Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(15) Each High Court shall frame rules for the purposes of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal:

Provided that this sub-section shall not apply to cases where the parties have agreed to the determination of fees as per the rules of an arbitral institution or in relation to an international commercial arbitration.

(16) For the purposes of this section, the relevant High Court shall be the High Court having jurisdiction under section 47.

14. Grounds for challenge.

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or any other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation.—The grounds stated in the First Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Second Schedule.

(2) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(3) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(4) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Third Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

15. Challenge procedure.

- (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.
- (2) In the absence of any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (2) of section 14, send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator challenged under sub-section (2) withdraws from their office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
- (5) Any arbitral award made following an unsuccessful challenge may be set aside under section 39 by the Competent Court on the grounds earlier urged before the arbitral tribunal.
- (6) Where an arbitral award is set aside on the same grounds as were earlier urged in an unsuccessful challenge before the arbitral tribunal, the Competent Court may decide that the arbitrator who was challenged shall not be entitled to any fees or to reduced fees.

16. Failure or impossibility to act.

- (1) Subject to any procedure agreed by the parties, the mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if
 - (a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and
 - (b) he withdraws from his office or the parties agree to the termination of his mandate.
- (2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Competent Court to decide on the termination of the mandate:

Provided that during the pendency of such application, unless restrained by the Competent Court, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

- (3) If, under this section or sub-section (3) of section 15, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (2) of section 14.

17. Termination of mandate and substitution of arbitrator.

- (1) In addition to the circumstances referred to in section 15 or section 16, the mandate of an arbitrator shall terminate—
 - (a) where he withdraws from office for any reason; or
 - (b) by or pursuant to agreement of the parties.

- (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the procedure that was applicable to the appointment of the arbitrator being replaced.
- (3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.
- (4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV

Jurisdiction of arbitral tribunals

18. Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction, including any pleas with respect to the existence or validity of the arbitration agreement, shall be raised not later than the submission of the statement of defence:

Provided that a party shall not be precluded from raising such a plea merely because he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) either as a preliminary question or in an award on the merits.

(6) If a plea referred to in sub-section (2) or sub-section (3) is treated as a preliminary question, and if such plea is rejected, the arbitral tribunal shall continue with the arbitral proceedings and make an arbitral award.

(7) A party aggrieved by the rejection of a plea referred to in sub-section (2) or sub-section (3) may rely on the grounds earlier urged by it while seeking to set aside any subsequent award under section 39.

19. Interim measures ordered by arbitral tribunal.

(1) A party may, during the arbitral proceedings, apply to the arbitral tribunal—

- (a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (b) for an interim measure of protection in respect of any of the following matters, namely:—

- (i) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
- (ii) securing the amount in dispute in the arbitration;
- (iii) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (iv) interim injunction or the appointment of a receiver;
- (v) interrogatories and discovery of documents;
- (vi) maintaining or restoring status quo pending determination of the dispute;
- (vii) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party;
- (viii) enforcing any obligation of confidentiality —
 - (A) that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other document;
 - (B) under any law or rule of law; or
 - (C) under the rules of arbitration (including the rules of an arbitral institution) agreed to or adopted by the parties
- (c) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the Competent Court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 42, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Competent Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (V of 1908), in the same manner as if it were an order of the Competent Court.

(3) An order issued by the arbitral tribunal under this section may be enforced through an application filed before any District Court having jurisdiction over:

- (a) the person of the party against whom the order is sought to be enforced; or
- (b) the subject matter of the order issued by the arbitral tribunal.

(4) In international commercial arbitrations, the arbitral tribunal may order a claimant to provide security for the costs of the arbitration:

Provided that the power to provide security for costs shall not be exercised on the ground that the claimant is —

- (a) an individual ordinarily resident outside Pakistan, or
- (b) a corporation or association incorporated or formed under the law of a country outside Pakistan, or whose central management and control is exercised outside Pakistan.

CHAPTER V

Conduct of arbitral proceedings

20. General duty of arbitral tribunal.

(1) The arbitral tribunal shall—

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting their case and dealing with that of their opponent, and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

(2) The arbitral tribunal shall comply with such general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

21. Determination of rules of procedure.

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (Act V of 1908), the Qanun e Shahadat Order, 1984 (PO 10 of 1984) or the Stamp Act, 1899 (Act II of 1899).

(2) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) In the absence of any agreement referred to in sub-section (2), the arbitral tribunal may, subject to the provisions of this Act, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine —

- (a) the admissibility, relevance, materiality and weight of any evidence sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such evidence should be exchanged and presented;

(b) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;

(c) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done; and,

(d) whether and to what extent the arbitral tribunal should itself take the initiative in ascertaining the facts and the law.

(5) The arbitral tribunal may fix the time within which any directions given by it are to be complied with, and may if it thinks fit extend the time so fixed (whether or not it has expired).

(6) Unless otherwise agreed by the parties, an arbitral tribunal has power to administer oaths to or take affirmations of the parties and witnesses.

22. Seat and venue of arbitration.

(1) The parties are free to agree on the seat of the arbitration.

(2) In the absence of any agreement between the parties, the seat of the arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any venue it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of documents, goods or other property.

(4) Unless the context otherwise requires, a reference in an arbitration agreement to a place of arbitration shall be deemed to be a reference to the seat of the arbitration.

23. Commencement and consolidation of arbitral proceedings.

(1) Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

(2) The parties are free to agree—

(a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

(3) Unless the parties agree to confer such power on the arbitral tribunal, the arbitral tribunal has no power to order consolidation of arbitral proceedings or concurrent hearings.

24. Language.

(1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) In the absence of any agreement between the parties, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision, or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

25. Statements of claim and defence.

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state –

- (a) the facts supporting his claim,
- (b) the points at issue; and,
- (c) the relief or remedy sought,

and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) Unless otherwise agreed by the parties or determined by the arbitral tribunal, the parties may:

- (a) submit with their statements all documents they consider to be relevant; or,
- (b) add a reference to the documents or other evidence they will submit.

(3) The respondent, in support of his case, may also submit a counter-claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter-claim or set-off falls within the scope of the arbitration agreement.

(4) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

(5) Unless otherwise agreed by the parties or determined by the arbitral tribunal, the statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.

26. Hearings and written proceedings.

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any

adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods, or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated at the same time to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall also be communicated by the arbitral tribunal to the parties.

(4) Unless otherwise agreed by the parties or determined by the arbitral tribunal, all witness evidence shall be presented in the form of a witness statement which shall include:

- (a) the full name and address of the witness, a statement regarding their present and past relationship (if any) with any of the parties, and a description of their background, qualifications, training, and experience, if such a description may be relevant to the dispute or to the contents of the statement;
- (b) a full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter in dispute;
- (c) all documents on which the witness relies that have not already been submitted;
- (d) a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony during the arbitral proceedings;
- (e) an affirmation of the truth of the witness statement; and
- (f) the signature of the witness and its date and place.

27. Default of a party.

(1) Unless otherwise agreed by the parties, where, without showing sufficient cause,—

- (a) the claimant fails to communicate his statement of claim in accordance with subsection (1) of section 25, the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with subsection (1) of section 25, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited;
- (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

(2) Unless otherwise agreed by the parties, if the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—

(a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or

(b) has caused, or is likely to cause, serious prejudice to the respondent,

the arbitral tribunal may make an award dismissing the claim.

(3) Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) a party fails to comply with any order or direction of the arbitral tribunal, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the arbitral tribunal considers appropriate;

(b) a claimant in an international commercial arbitration fails to comply with a peremptory order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing his claim; or

(c) a party fails to comply with any other kind of peremptory order, then, without prejudice to sub-section (2) of section 19, the arbitral tribunal may do any of the following—

(i) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;

(ii) draw such adverse inferences from the act of non-compliance as the circumstances justify;

(iii) proceed to an award on the basis of such materials as have been properly provided to it;

(iv) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

28. Expert appointed by arbitral tribunal.

(1) Unless otherwise agreed by the parties, the arbitral tribunal may—

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all such documents, goods, or other property which he was provided in order to prepare his report.

29. Court assistance in taking evidence.

(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Competent Court for assistance in taking evidence and the Competent Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Competent Court may execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Competent Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Competent Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Competent Court.

Explanation:- In this section the expression “Processes” includes summons and commissions for the examination of witnesses and summons to produce documents.

(6) A person shall not be compelled by virtue of this section to produce any document or other material evidence which they could not be compelled to produce in legal proceedings.

CHAPTER VI

Making of arbitral award and termination of proceedings

30. Law applicable to substance of dispute.

(1) Except as provided below, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in Pakistan.

(2) In international commercial arbitrations,—

(a) the arbitral tribunal shall decide the dispute in accordance with the law designated by the parties as applicable to the substance of the dispute;

(b) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules; and,

(c) in the absence of any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(4) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

31. Decision making by panel of arbitrators.—

(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

32. Time limit for arbitral award.—

(1) The award in matters other than international commercial arbitrations shall be made by the arbitral tribunal within a period of eighteen months from the date of completion of pleadings under sub-section (5) of section 25.

(2) If the award in matters other than international commercial arbitrations is made within a period of twelve months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) In matters other than international commercial arbitrations, the parties may, by consent, extend the period specified in sub-section (1) for making an award by another period not exceeding twelve months.

(4) If the award in matters other than international commercial arbitrations is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Competent Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Competent Court finds that the proceedings have been delayed for reasons attributable to the arbitral tribunal, then, it may order reduction of the fees of the arbitrator(s) by an amount not exceeding five per cent. for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator(s) shall continue till the disposal of the said application:

Provided also that the arbitrator(s) shall be given an opportunity of being heard before the fees are reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Competent Court.

(6) While extending the period in pursuance of sub-section (4), it shall be open to the Competent Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Competent Court to impose actual or exemplary costs upon a party if it determines that the delay necessitating an extension of period referred to in sub-section (4) was caused by that party.

(9) An application filed under sub-section (5) shall be disposed of by the Competent Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

33. Settlement.

(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 35 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

34. Remedies.

(1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.

(2) Unless otherwise agreed by the parties, the arbitral tribunal has the following powers.

- (a) To make a declaration as to any matter to be determined in the proceedings; and,
- (b) To order the payment of a sum of money, in any currency.

(3) The arbitral tribunal has the same powers as the Competent Court—

- (a) to order a party to do or refrain from doing anything;
- (b) to order specific performance of a contract; and,

(c) to order the rectification, setting aside or cancellation of a deed or other document.

35. Form and contents of arbitral award.

- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
- (3) The arbitral award shall state the reasons upon which it is based, unless—
 - (a) the parties have agreed that no reasons are to be given, or
 - (b) the award is an arbitral award on agreed terms under section 33.
- (4) The arbitral award shall state the date when it was made and the seat of the arbitration as determined in accordance with section 22 (and the award shall be deemed to have been made at the seat so stated).
- (5) After the arbitral award is made, a signed copy shall be delivered to each party.
- (6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
- (7) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money:
 - (a) the arbitral tribunal may include in the sum for which the award is made compensation for the delay in payment for the period from the date of institution of the arbitral proceedings till the date of the award; and,
 - (b) the arbitral tribunal may further direct that the beneficiary of the award shall be entitled to additional compensation over and above the sum awarded till the realization of all amounts due under or in relation to the award.
- (8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 36.

36. Regime for costs.

- (1) For the purpose of this section, “costs” means reasonable costs relating to—
 - (a) the fees and expenses of the arbitrators, courts and witnesses;
 - (b) legal fees and expenses;
 - (c) any administration fees of the institution supervising the arbitration; and
 - (d) any other expenses incurred in connection with the arbitral or court proceedings and the arbitral award.
- (2) Unless otherwise agreed by the parties, in relation to international commercial arbitrations the arbitral tribunal shall determine—

- (a) the amount of costs payable by one party to another; and,
 - (b) when such costs are to be paid.
- (3) In relation to matters other than international commercial arbitrations, the arbitral tribunal has discretion to determine—
- (a) whether each party should bear their own costs: or,
 - (b) whether costs are payable by one party to another, and if so;
 - (i) the amount of such costs; and
 - (ii) when such costs are to be paid.
- (4) If an arbitral tribunal decides to award costs, then unless otherwise agreed by the parties:
- (a) the arbitral tribunal shall follow the general principle that costs should follow the event,
 - (b) except where it appears to the arbitral tribunal that in the circumstances the application of the general principle is not appropriate in relation to the whole or part of the costs.
- (5) In determining the costs, the arbitral tribunal shall take into consideration all relevant circumstances, including—
- (a) the conduct of all the parties;
 - (b) whether a party has succeeded partly in the case;
 - (c) whether the party had made a frivolous counter-claim leading to delay in the disposal of the arbitral proceedings; and
 - (d) whether any reasonable offer to settle the dispute was made by a party and refused by the other party.
- (6) The arbitral tribunal may make any order under this section including the order that a party shall pay—
- (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and,
 - (g) compensation for the failure to pay costs within the stipulated period.
- (7) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.

37. Termination of proceedings.

- (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—
 - (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,
 - (b) the parties agree on the termination of the proceedings, or
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) Subject to section 38 and sub-section (4) of section 39, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

38. Correction and interpretation of award; additional award.

- (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- (2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the correction or the interpretation shall form part of the arbitral award.
- (3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.
- (4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- (5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.
- (6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation, or make an additional arbitral award under sub-section (2) or sub-section (5).
- (7) Section 40 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

CHAPTER VII

Recourse against arbitral award

39. Application for setting aside arbitral award.

(1) Recourse to the Competent Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Competent Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—

- (i) a party was under some incapacity, or
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication thereon, under the laws of Pakistan; or
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, in the absence of such agreement, was not in accordance with this Act; or

(b) the Competent Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Pakistan, or
- (ii) the arbitral award is in conflict with the public policy of Pakistan.

(3) Without limiting the generality of subparagraph (2)(b)(ii), an award is in conflict with the public policy of Pakistan where—

- (a) the making of the award was induced or affected by fraud or corruption; or
- (b) a material breach of the rules of natural justice occurred—
 - (i) during the arbitral proceedings; or
 - (ii) in connection with the making of the award.

Explanation.— A determination as to whether an award is in conflict with the public policy of Pakistan shall not entail a review on the merits of the dispute but only whether it conflicts with the most fundamental norms of morality and justice.

(4) An arbitral award arising out of arbitrations other than international commercial arbitrations may also be set aside by the Competent Court if the Competent Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(5) An application for setting aside an arbitral award may not be made after ninety days have elapsed from:

(a) the date on which the party making that application had received the arbitral award; or,

(b) if a request had been made under section 38, from the date on which that request had been disposed of by the arbitral tribunal.

(6) To the extent a party alleges that the making of an arbitral award was induced or affected by fraud or corruption, an application for setting aside such award may not be made after ninety days have elapsed since the party became aware of the fraud or corruption.

(7) If the Competent Court is satisfied that the applicant was prevented by sufficient cause from making an application within the times stipulated in sub-section (5) and sub-section (6), it may entertain such application within a further period of thirty days, but not thereafter.

(8) On receipt of an application under sub-section (1), the Competent Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(9) An application under this section shall be filed by a party only after issuing prior notice to the other party and such application shall be accompanied by an affidavit by the applicant confirming compliance with the said requirement.

(10) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (9) is served upon the other party.

CHAPTER VIII

Finality and enforcement of arbitral awards

40. Finality of arbitral awards.

(1) Subject to this Act, an arbitral award shall be final and binding on the parties and persons claiming under them respectively and may accordingly be relied on by any of those parties and persons by way of defence, set off or otherwise in any legal proceedings in Pakistan.

(2) An arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made except as specifically provided for in this Act.

(3) An arbitral award shall not be binding on persons that were not parties to the arbitration agreement.

41. Enforcement and stay of award.

(1) Where the time for making an application to set aside an arbitral award under section 39 has expired, then, unless the Competent Court has:

(a) stayed the operation of that arbitral award in accordance with sub-section (2); or,

(b) set aside that arbitral award under section 39,

such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) in the same manner as if it were a decree of a court.

(2) Upon filing of a separate application for stay of the operation of an arbitral award, the Competent Court may, subject to such conditions as it may deem fit, stayed the operation of such award for reasons to be recorded in writing:

Provided that in the case of an arbitral award for payment of money the Competent Court shall, while considering the application for grant of stay, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (Act V of 1908).

(3) An application for the enforcement of an award shall take the form of an application for execution of a decree and may be filed in any District Court having jurisdiction over any assets or the person of the party against whom the arbitral award is sought to be enforced.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where an application for the enforcement of an award has been filed in a District Court, that District Court alone shall have jurisdiction to conduct execution proceedings, provided that precepts may be issued or execution proceedings may be transferred to another District Court in accordance with the Code of Civil Procedure, 1908 (Act V of 1908).

CHAPTER IX

Appeals

42. Appealable orders.

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the court passing the order, namely:—

(a) refusing to refer the parties to arbitration under section 9;

(b) granting or refusing to grant any measure under section 10;

(c) setting aside or refusing to set aside an arbitral award under section 39.

(2) An appeal shall also lie to the Competent Court from an order of the arbitral tribunal—

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 18; or
- (b) granting or refusing to grant an interim measure under section 19.

(3) No second appeal or revision shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right of appeal to the Supreme Court.

CHAPTER X

Miscellaneous

43. Deposits.

(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 35, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amounts of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

Provided that where one party fails to pay their share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

44. Lien on arbitral award and deposits as to costs.

(1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Competent Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into the Competent Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into the Competent Court there shall be paid to the arbitral tribunal by way of costs such sum as the Competent Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Competent Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

45. Arbitration agreement not to be discharged by death of party thereto.

(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

46. Provisions in case of insolvency.

(1) Where a party to an arbitration agreement has been found to be insolvent and the person having jurisdiction to administer the property of the insolvent adopts the agreement, the arbitration agreement shall be enforceable by or against that person.

(2) The Competent Court may direct any matter in connection with or for the purpose of insolvency proceedings to be referred to arbitration if—

- (a) the matter is one to which the arbitration agreement applies;
- (b) the arbitration agreement was made before the commencement of the insolvency proceedings by a person who has subsequently been adjudged insolvent; and
- (c) the person having jurisdiction to administer the property does not adopt the agreement.

(3) An application under sub-section (2) may be made by—

- (a) any other party to the arbitration agreement; or
- (b) any person having jurisdiction to administer the property of the insolvent.

47. Jurisdiction.

(1) Where the parties have agreed to the seat of the arbitration, or where the arbitral tribunal has determined the seat of the arbitration, the Competent Court shall be the relevant High Court or District Court (as the case may be) within whose territorial jurisdiction the seat of the arbitration is located.

(2) Where the parties have not agreed to the seat of the arbitration, or where the arbitral tribunal has not determined the seat of the arbitration, the Competent Court shall be the relevant High Court or District Court (as the case may be) within whose territorial jurisdiction:

- (a) any of the parties actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) the cause of action, wholly or partly, arises.

(3) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Act has been made in a Competent Court, that Competent Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that arbitration agreement and the arbitral proceedings shall be made in that Competent Court and in no other court.

Provided that no court shall exercise any jurisdiction under this Act in relation to arbitrations seated outside Pakistan except as provided by sub-section (2) of section 3.

(4) To the extent sub-section (2) of section 3 allows any court to exercise any jurisdiction in relation to arbitrations seated outside Pakistan, the Competent Court shall be the relevant High Court within whose territorial jurisdiction:

- (a) any of the parties actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein, is located.

(5) Nothing in this section shall apply to:

- (a) applications for stay of proceedings under section 9, which shall be heard by the court hearing the proceedings sought to be stayed;
- (b) applications for enforcement of an order under section 19; or
- (b) applications for the enforcement of an award under section 41.

48. Confidentiality and protection for good faith actions.

(1) Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except to the extent the disclosure of the award is necessary for the purpose of implementation and enforcement of award.

(2) No suit or other legal proceedings shall lie against the arbitrator, an arbitral institution, or any person designated by the High Court under section 13 for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

49. Limitations.

(1) The Limitation Act, 1908 (Act IX of 1908), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1908 (Act IX of 1908), an arbitration shall be deemed to have commenced on the date referred to in section 23.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the arbitration agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the arbitration agreement applies, the Competent Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that

the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Competent Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Competent Court shall be excluded in computing the time prescribed by the Limitation Act, 1908 (Act IX of 1908), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

CHAPTER XI

Supplementary provisions

50. Exclusion of stamp laws.

- (1) Notwithstanding anything contained in any other law to the contrary, the following shall not be subject to any duties in the nature of stamp, including any duty under the Stamp Act, 1899 (Act II of 1899):
- (a) an arbitration agreement; and,
 - (b) an arbitral award issued under this Act.

51. Procedure and powers of court.

Subject to the provisions of this Act and of rules made thereunder –

- (1) In the exercise of its jurisdiction under this Act, a Competent Court shall,–
- (a) follow the procedure as nearly as may be provided for in the Code of Civil Procedure, 1908 (Act V of 1908); and,
 - (b) have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).
- (2) A District Court before whom an application for enforcement of an arbitral award is filed under section 41 shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).

52. Power of High Court to make rules.

- (1) Each High Court may make rules consistent with this Act as to all proceedings under this Act.
- (2) Without prejudice to the generality of sub-section (1), the power of a High Court to make rules shall include the power to make rules regarding:
- (a) the nomination of arbitrators;
 - (b) the manner in which applications for costs are to be filed and substantiated;
 - (c) the procedures applicable to arbitrations not governed by the rules of an arbitral institution;
 - (d) the forms to be used for the purposes of this Act; and,
 - (e) generally, all proceedings in a court under this Act

(3) Till such time that a High Court makes rules, the model rules appended to this Act in the Fourth Schedule shall be applicable.

53. Power to make regulations.

(1) The Federal Government may, by notification in the Official Gazette, make regulations for carrying out the provisions of this Act.

54. Repeal and savings.

(1) The Arbitration Act, 1940 (Act X of 1940) is hereby repealed.

(2) Notwithstanding such repeal,—

(a) the provisions of the said enactment shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

FIRST SCHEDULE

Grounds for justifiable doubts under section 14(1)(b))

SECOND SCHEDULE

Disclosures by arbitrators under section 14(1)(b)

THIRD SCHEDULE

Categories of prohibited relationships under section 14(5))

FOURTH SCHEDULE

Model Rules