

Salient Features of the Draft Bill on Arbitration in Pakistan

The draft law prepared by the Arbitration Law Review Committee of the Law and Justice Commission of Pakistan is based on the UNCITRAL Model Law and takes inspiration not only from regional interpretations of the Model Law but also from the laws of Singapore, Malaysia, and the United Kingdom. At the same time, the draft law has been prepared keeping in view the particular challenges and demands of legal reform in Pakistan.

The draft law deals comprehensively with all arbitrations seated within Pakistan, whether partly international (for example, where one party is not a citizen of Pakistan) or purely domestic. Except to the extent of interim relief (and some other provisions) it does not deal with foreign arbitrations seated outside Pakistan because such arbitrations are already catered for by the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards), 2011 which implements the New York Convention, 1958. In this regard, the draft law is different from the Model Law which deals with both foreign and international arbitrations but does not deal with purely domestic arbitrations.

Further, whereas the Model Law applies essentially the same standards to both international and foreign arbitrations, the draft law differentiates between purely domestic and international arbitrations. The draft law thus recognizes a greater degree of party autonomy in relation to international arbitrations, in part on the basis that the parties involved in international arbitrations are more likely to be sophisticated so that there is less of a concern regarding inequality of bargaining power. Similarly, the draft law provides for a greater degree of scrutiny in relation to domestic awards (as opposed to awards resulting from international arbitrations). Finally, the draft law accommodates the needs of sophisticated domestic parties by allowing them to opt into the less restrictive regime applicable to international arbitrations.

The draft law brings in changes relating to the regulation of arbitrators. For example, it is standard practice in relation to the Arbitration Act, 1940 Act for each party to appoint partisan representatives as arbitrators, with the ensuing stalemates being ultimately resolved by an umpire. By comparison, the draft law prohibits even-numbered arbitral tribunals. Further, arbitrators will be required to certify their impartiality prior to appointment. Finally, except for clauses explicitly providing for party-appointed arbitrators, appointments will be by an external entity (the relevant High Court or its designate).

The powers of arbitral tribunals have been greatly expanded in the draft law. For example, the draft law explicitly recognizes the principle of *kompetenz-kompetenz* and contains express provisions granting arbitral tribunals the power to grant interim relief, including the power to demand security for costs. Further, to the extent interim relief has been granted by a court, such relief shall be subject to modification by the arbitral tribunal. Finally, the draft law empowers arbitral tribunals to pass appropriate orders where a party fails to comply with an interim order while also containing detailed provisions for judicial measures in support of arbitration. The draft law also provides that refusal to abide by the orders of an arbitral tribunal may be prosecuted as contempt of court.

While the Arbitration Act, 1940 contains numerous provisions providing for judicial intervention, the draft law expressly provides that no court shall intervene in arbitral proceedings except to the extent expressly authorised by the law. As such, courts will be required to stay judicial proceedings and to refer all matters to arbitration unless they find that *prima facie* no arbitration agreement exists. The draft law also restricts the opportunities to appeal during the pendency of an arbitral proceeding so as to ensure that proceedings are not disrupted. Finally, the draft law does away with the requirement under the Arbitration Act, 1940 to have an award made “rule of the court” and instead provides that an award becomes automatically enforceable unless it is either set aside or suspended by a competent court on the limited grounds enumerated in the draft law. It is also important to note that in relation to international arbitrations, the competent court for challenges to an award will be the relevant High Court, while in all other cases it will be the District Court. This marks a major change from the Arbitration Act, 1940, where challenges are normally filed before civil courts, the lowest rung in the hierarchy of courts exercising original civil jurisdiction.