



B A R R I S T E R S - A T - L A W

Advocates of the High Courts & Supreme Court of Pakistan
and Legal & Policy Consultants

Institutions for Arbitration

Institutionalizing Arbitration in Pakistan

By

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Institution

Or

InstitutionS

“Privatisation of Justice”-Conference

"We will introduce a piece of legislation in the parliament to open the National Arbitration Center through amendment in the existing arbitration act,"

Prime Minister Shaukat Aziz said.

Thailand Arbitration

National Center

- Monopolistic
- State Controlled
- Only Thai Lawyers & Arbitrators
- Broad reviewability of arbitral awards by Thai courts

“The decision to arbitrate in Thailand cannot be automatic. It requires a foreign investor to specifically assess the value of the various factors and weigh the potential benefits against the risks. The result is unfortunate because, with modest reforms, Thailand could provide an ideal forum for arbitration and by extension, a more attractive site for foreign investment.” - ADB

Vietnam Arbitration

International Arbitration Centre

- **Permanent arbitral organization,**
- **Established by the Prime Minister's Decree- Law**
 - **Under State Controlled National Chamber**
 - **Not independent - indirectly controlled by the government**
 - **Was – Only Vietnamese Arbitrators**
- **(China Arbitration Commission– Arbitrators must be from the List)**

Arbitration is about **Party Autonomy**

**Freedom of the parties to choose:
How, Where and by Whom to Arbitrate**

How = Agreed Procedure/framework (ICC,
LCIA, agreed)

Where = which country & city

By Whom = Neutral Arbitrator of their
Choice – (NOT PANCHAYAT)

- **Arbitration Centres are not Legislated**
- **Legislation provides the Enabling Environment to Facilitate, Recognise and Enforce Arbitration Agreements and Awards**
- **The Institutions Regulate Themselves**
- **Their procedures will be chosen by the Parties if they are efficient, cost effective and enforceable**
- **Market – Parties will choose**

In order to Institutionalise Arbitration in Pakistan

- The Legislation needs to facilitate, Recognise and Enforce Arbitration and the Choice of the Parties
- Allow, Facilitate and Encourage the establishment of Neutral Independent Arbitration Centres to promote Foreign Direct Investment

So Need:

**Enabling Law – UNCITRAL model – UK 1996
Act
Domestic**

NY Convention

**Facilitates Foreign Investor choice of law,
place, arbitrator**

Eg. Notification

“foreign arbitral award” means a foreign **arbitral award made in a Contracting State** and such other State a may be notified by the Federal Government, in the Official Gazette.

Dubai

Geneva Protocol – China

*“In pursuance of the said reservation, the two implementing acts of 1937 and 1961 provide that the Government of India will notify the names of countries to which the convention would apply and which countries had made reciprocal provisions for the enforcement of Indian awards in those countries. With the opening of the economy and increase in the international trade, it is necessary to notify other countries also for this purpose. **Indian Council of Arbitration therefore requested the Government to take appropriate steps for notifying such countries particularly the countries which have the substantial trade with India.**”*

- Indian Council of Arbitration

COST

Advantages of Institutionalisation/Centers

- **No fixed cost to party**
- **Time Share**
- **Facilities**
- **Transcription**
- **Stationary**
- **IT**

- **Secretariat – assist in research, typing, formats, awards etc. – ICSID, WTO, WIPO, ICANN**

- **Training centers**

- **Accreditation of Arbitrators ICC, LCIA, CIA**

- **Supervision of Arbitration – In Pakistan eg. ICC**

NEED:

Trained/Accredited Arbitrators or Ex-Judges?

- **High Fee**
- **Conduct like Court – negate purpose**
- **Hesitation to set aside – Dignity of ex-Judges**

Criticising lawyers and former judges for charging high fees but failing to devote sufficient time to resolution of disputes, he said this tendency defeated the purpose of arbitration and conciliation and speedy delivery of justice outside the court system. –Indian Minister for Law and Justice H.R. Bhardwaj

Supreme Court judge K.G. Balakrishnan called for quality arbitration, matched by speedy disposal of cases.

Inclusive

- 1) Specialization,**
- 2) Training,**
- 3) Accreditation or Agreement**

Speed, Ease and Low Cost

Specializations

Advantages of Institutionalisation

Generally the choice of adjudicator is governed by their experience in the particular matter at hand. Thus if the subject matter is one of patents, a practitioner who has years of experience in patent matters will be asked to adjudicate the matter.

This advantage is what drives most parties to want their matter to be heard by way of ADR because of the relative disadvantage of having the matter heard by a judge with little experience of the issues at hand.

Lee Gillespie-White
South Africa
September 2002

Shipping
Information Technology
Construction/Projects
Patents / Intellectual Property
Securities/Capital Markets
Etc.

Indian Conference:

**The Need for Speed: Fast Track Institutional
Arbitration — Construction, Banking, Information
Technology and Intellectual Property Rights
Disputes**

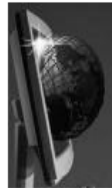
Advantages of ICC Arbitration

- **ICC in Pakistan**
- **6 months**
- **fixation of advances - No Fee Agreement-
Neutrality-Low Costs**
- **Challenge Impartiality**
- **Appoint Arbitrators**
- **Existence Validity Scope of arbitration clause**
- **Fixing Place of Arbitration**
- **Approve Terms of Reference**
- **Scrutinize & Approve Final Award**

- **Undertake to carry out Award without delays & Waive any means of recourse insofar as such waiver can be validly made under the applicable law**
- **provisional advance fixed by the Court**
- **Summarizing Claims and Counter Claims**
- **Penal System – Costs – No new Claims -**
- **Secretariat Facilities - interface between the arbitral tribunal and the parties on one hand and the Court on the other.**
- **Multicultural, Multinational**
- **Online Arbitration Rules – ETO - ICC**



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Online ADR Online Dispute Resolution (ODR)

The technologies that you can visit in this section receive the generic name **Online Dispute Resolution (ODR)**. ODR allows the parties to any ADR proceeding to resolve any dispute online from beginning to end, from demand to award.

ODR allows you to arbitrate with parties located anywhere in the world without leaving your desk. ODR, more importantly, allows the parties to choose the best suited arbitrator wherever his/her professional practice may be. ODR simply eliminates our physical limitation by providing a rich, meaningful, productive and confidential online environment within which to resolve any business disputes.

ODR Providers

1-2-3 Settle (BB)	FSM	SettleOnline
American Arbitration Association (AAA)	GWMMK	SettleTheCase
	Hong Kong International	SmartSettle



E-Arbitration-T

Technologies for
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Forum	Topics	Posts	Last Post
Discussion Lists in English			
 Procedural Aspects of Online Dispute Resolution (ODR) For discussion about (1) agreements to arbitrate online, (2) the management of the dispute resolution process, (3) the enforcement of an award rendered online and other key issues related to the dispute resolution process. Moderated by Thomas Schultz, Geneva University Law School. Moderator Thomas Schultz	6	23	Thu Oct 09, 2003 10:08 pm Guest →
 Harmonization of international policies on Online Dispute Resolution For discussion, notices, etc. about conditions of validity of the arbitration clause (for instance, electronic format/digital signature); harmonization of the evidence value and requirements of electronic documents; standardization of techniques capable of converting non-electronic evidence in electronic format; enforcement of the electronic Arbitral Award (conditions for the "e-exequatur"; the "place" of online arbitration. We issued a concrete proposal in a document called Basis for Online Arbitration Harmonisation [Download this document here]	4	14	Thu Feb 06, 2003 4:23 pm Anne Strommes →
 Consumer ADR/ODR Discussion List For discussion about ADR/ODR. Moderated by Julia H?rnle by IT Law Unit, Centre for Commercial Law Studies, Queen Mary & Westfield College. London (UK). Moderator Julia	3	6	Thu Feb 06, 2003 3:58 pm ODR Moderator →

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ADR / Legal community

Ads by Goooooogle

Construction Claims
Preparation and analysis of construction claims

Internet

Online Arbitration:

WIPO

ICANN

ICC In the near future, the Internet shall become the commercial backbone of the world economy. As it increases in importance to the national and international economy, its smooth, trouble free operation will be seen as essential to commercial, and hence, national interests and there will be a correlating desire on the part of the countries to provide increasing regulation of this last frontier.

In order to minimize this governmental intrusion and the resulting restraint of trade inherent in all government regulation, Internet users can follow the historic lead of the railroad and airline industries and submit their controversies to arbitration and mediation

**Private,
Institutional,
&
Judicial
Partnership**

**Technical expert/decision by
Arbitrator**

Enforcement by Judiciary

QUESTIONS

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prima facie existence of ICC arbitration clauses, the fixation of the place of arbitration, the recusation or removal of arbitrators, the prolongation of delays to finalize the terms of reference and render the final award, the approval of terms of reference, the approval of awards submitted in draft form to the Court).

One of the central duties of the Secretariat is then to analyze and study different aspects of the case and assist the Court in the ensuing decision-making process.