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Pakistan

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Pakistan.

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PAKISTAN LITIGATION



1. What are the main methods of resolving commercial disputes?

The two main methods of dispute resolution, in order of predominance, are litigation and arbitration. As is the case with most common law jurisdictions, the Pakistani court system is adversarial. Litigation is governed by a host of substantive and procedural laws.

The two major statutory instruments that govern arbitration are the Arbitration Act 1940, which applies to local arbitration, and the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, which applies to arbitration agreements and arbitral awards that are subject to the New York Convention.

Other ADR methods such as mediation and conciliation have received legal recognition in the last decade. However they are not widely used.

2. What are the main procedural rules governing commercial litigation?

The principal law of procedure governing civil litigation in Pakistan is the Code of Civil Procedure 1908 (the Code). The Code sets out the principles for determining jurisdiction and the procedure applicable to various stages of litigation, including institution of a suit, interlocutory relief, discovery and inspection, trial, appeals and enforcement of judgments. The Code is applicable to all four provinces and the Islamabad Capital Territory, with each province or territory being able to make amendments thereto.

Limitation periods are prescribed in the Limitation Act 1908 and the procedure relating to evidence is set out in the Qanun e Shahadat Order 1984.

Recently, the Commercial Courts Ordinance 2021 (the 2021 Ordinance) has been introduced in Punjab for the establishment of commercial courts. The 2021 Ordinance sets out procedure applicable to commercial litigation in Punjab, and provides for timeframes for decision of

claims, e-filing, stricter rules on adjournments and a requirement that defendants obtain leave of the court in order to be entitled to defend a claim.

In addition, there are special laws dealing with specific subjects which provide for establishment of courts and tribunals and set out the procedure applicable to them. These special laws, inter alia, relate to banking, company, competition, consumer protection, rent, industrial relations, intellectual property, environment and tax.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Civil courts in Pakistan are established under the Civil Courts Ordinance 1962 which has been adopted, subject to certain modifications, in each of the four provinces and the Islamabad Capital Territory, and provides for the following hierarchy of courts, in descending order:

- the court of the district judge;
- the court of the additional district judge; and
- the court of the civil judge.

Each civil court is presided over by a single judge who hears and decides all cases in the court. Generally, the courts of the civil judges serve as the courts of first instance. Civil judges are divided into classes, with each class having a different pecuniary jurisdiction. Courts of district judges generally exercise appellate jurisdiction. However, they also serve as courts of first instance for certain types of cases, such as defamation. The courts of the additional district judge discharge such functions of the district judge as the district judge may assign, and in the discharge of those functions that court exercises the same powers as the court of the district judge. One important exception to the aforesaid is in the district of Karachi, where the original jurisdiction to hear civil claims valued at more than 15 million Pakistani Rupees is with the High Court of Sindh. In Islamabad Capital Territory, the Code has recently been amended such that claims valued at Rupees 50 million and above must

be commenced in the court of the district judge whereas the civil judge retains original jurisdiction in respect of claims of lower value. Another exception is in Punjab province, where the recently established commercial courts have original jurisdiction to decide commercial disputes valued at above 500,000 Pakistani Rupees. Appeals against decisions of commercial courts are filed before the Commercial Appellate Tribunal constituted under the 2021 Ordinance.

The High Courts also exercise constitutional jurisdiction under which they can adjudicate challenges to the legality of actions of government authorities. Any party aggrieved by the actions of such authorities may petition the High Court for relief in the nature of the issuance of a writ. Businesses often invoke constitutional jurisdiction of the High Court to challenge the legality of actions of regulatory authorities, government departments, state owned enterprises and tax authorities.

In addition to the ordinary civil courts, Pakistan has set up various specialised courts and tribunals that exercise jurisdiction over certain types of civil disputes, such as banking courts, rent courts, consumer courts and intellectual property tribunals. Further, there may also be an administrative division of cases among the various benches of a court.

All the courts mentioned above, including all ordinary and specialised courts, fall within the supervisory jurisdiction of one of the five High Courts in Pakistan. While the High Courts generally exercise appellate jurisdiction, they are conferred with original civil jurisdiction in certain matters, including company and banking cases, by way of statute.

Ordinarily, appeals from the High Court lie before the Supreme Court, which is the final court of appeal.

4. How long does it typically take from commencing proceedings to get to trial?

The typical timeframe varies depending on the court in which proceedings have been instituted. In civil, commercial and district courts, it can take between 3 months to 1 year from institution of proceedings until trial is commenced. At the High Court, the typical timeframe is 5-7 years.

Civil proceedings are commenced by filing of a plaint. This is followed by issuance of summons to the defendant which is allowed 30 days to file a written statement of defence. On the basis of the pleadings of the parties, the Court frames the issues of law and fact which require determination in the case. Thereafter, trial commences, with evidence of the plaintiff followed by

that of the defendant being recorded. After the conclusion of the evidence stage, the parties make final arguments, after which the court pronounces judgment.

Many courts in Pakistan are currently facing a lack of capacity owing to an overwhelming number of pending cases, inadequate number of judges and leniency in granting adjournments. Though there is no requirement of law to that effect, in practice, courts decide interlocutory applications (such as applications for interim injunction, adding or striking off parties, appointment of receiver, rejection of plant etc.) before commencing trial. This is another cause of delays. Civil courts are not equipped with the requisite digital technology and are dependent on labour intensive manual methods of record-keeping, etc. There is vast room for improvement in the current setup for improving the capacity of civil courts to handle caseloads. The judiciary continues to grapple with the problem of a high number of pending cases.

Recent amendments in the Code of Civil Procedure 1908 Khyber Pakhtunkhwa and Islamabad Capital Territory have sought to impose strict timelines with the aim of reducing delays. Such amendments include provisions requiring cases to proceed before two different courts simultaneously, with one court hearing interlocutory applications and the other, the main suit, including evidence and final arguments. The amendments also seek to abolish the right of parties to a second appeal and impose strict timelines for most stages of civil litigation.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Yes, ordinarily all court hearings are held in public.

Documents filed in court are generally accessible to the public.

Live streaming of proceedings in cases of public importance is being considered by the Supreme Court.

6. What, if any, are the relevant limitation periods?

The general law of limitation is set forth in the Limitation Act 1908 (the 1908 Act) and is applicable to all provinces of Pakistan and the Islamabad Capital Territory. The 1908 Act prescribes limitation periods applicable to different kinds of claims. Most civil claims have a limitation period of three to six years. For most contractual disputes, the limitation period is 3 years

from the date when cause of action arises. Claims founded on the grounds of mistake and fraud must be filed within 3 years limitation from date of knowledge.

Statutorily prescribed time limits cannot be suspended or waived by mutual consent of the parties to a dispute and, subject to certain exceptions provided in the Limitation Act, every suit instituted after expiry of the period of limitation prescribed is required to be dismissed by the court.

In addition to the Limitation Act, some statutes also provide for special limitation periods to be applied in certain cases.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

No action is generally required to be taken before the filing of a suit (claim) in the courts. Some statutes, such as the Defamation Ordinance 2002, require a notice to be sent to the defendant prior to commencement of suit. Other statutes require notices to be sent to certain government bodies before a suit is instituted against them.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Civil proceedings commence with the presentation of a claim (plaint) in the relevant court of first instance in accordance with the procedural requirements of the Code and payment of the requisite court fees. Upon perusal of the plaint by the judge, on in some cases, a judicial officer, summons along with the claim documents are served on the defendants through prescribed modes of service to enable them to file their reply on or before a specified date.

Summons are ordinarily served by registered post and personal service by a court appointed bailiff. If this is unsuccessful, the court can order substituted service by several means, including service by publication in a newspaper.

To avoid delays occasioned by unsuccessful service, the Code of Civil Procedure 1908 has recently been amended in Khyber Pakhtunkhwa and the Islamabad Capital Territory, to require summons to be served, in the first instance, simultaneously by the court bailiff,

registered post with acknowledgement and courier.

9. How does the court determine whether it has jurisdiction over a claim?

The rules for determining whether a court has jurisdiction over a particular claim are set in the sections 16 to 20 of the Code and the 1962 Ordinance.

In claims relating to immovable property, the suit must be brought in the court in whose territorial jurisdiction such property is situated. Other claims, including claims for breach of contract, are required to be instituted in the court in whose territorial jurisdiction the cause of action arises or that in which the defendant resides or carries on business.

The 1962 Ordinance prescribes the pecuniary jurisdiction of the courts (see response to question 3 above).

The court undertakes a preliminary assessment of whether it has jurisdiction to adjudicate a claim at the time the plaint is presented. Thereafter, at any time during the pendency of the case, the court may, on the application of the defendant or otherwise, conclude that it does not have jurisdiction. If the court concludes that it does not have jurisdiction, the plaint is returned to the plaintiff for presentation to the court having jurisdiction.

10. How does the court determine what law will apply to the claims?

Courts in Pakistan give effect to the choice of the parties as to the governing law of their contract. Points of foreign law must be pleaded as matters of fact with the aid of expert evidence.

As the system of litigation is adversarial, in practice, it is for the parties to insist upon the application of laws of a particular jurisdiction, failing which the courts generally proceed to apply the laws of Pakistan.

In absence of any choice of law, where there is a dispute as to the system of law applicable to a dispute, courts apply conflict of law rules, which are largely based on the corresponding rules in English common law.

11. In what circumstances, if any, can claims be disposed of without a full trial?

Civil suits (claims) can be disposed of without a full trial on the basis of admission by the defendant(s); by compromise between the parties; by judgment in default of appearance of the defendant; by return of plaint

(where the court lacks jurisdiction); rejection of plaint (such as where the plaint does not disclose a cause of action or where the suit is barred by law) .

Claims may also be disposed of by summary proceedings, where the law so allows, as is the case with claims founded on negotiable instruments. Furthermore, banking suits (claims arising from loans given by financial institutions) may be defended only after the defendant(s) obtain leave to defend from the banking court, failing which they too are disposed of by summary proceedings.

Notably, the existence of an arbitration agreement between parties covering the dispute that is subject of a suit does not enable such suit to be disposed of. The existence of such agreement merely entitles the defendant to seek stay of suit.

12. What, if any, are the main types of interim remedies available?

Civil courts in Pakistan may grant a number of interim remedies, including:

- arrest;
- attachment before judgment;
- injunction;
- interim sale;
- payment into court;
- appointment of receiver; and
- inspections by court officer.

Remedies in the nature of *Mareva* injunctions and *Anton Piller* orders are rarely sought in Pakistani courts and may be granted in appropriate circumstances.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

A suit is instituted by presentation of a plaint along with all documents on which the plaintiff seeks to rely. The defendant is required to file a written statement of defence and (if applicable) set off along with all documents on which it shall rely within a period not ordinarily exceeding 30 days.

Should any party wish to make applications for interim remedies, it shall be required to file the requisite application in writing along with supporting documents. The respondent is entitled file written objections and the applicant may then file a written rejoinder.

In civil claims, the parties' witnesses file their affidavits in evidence, which generally serve as their examination in chief, during which they are also required to file originals of documents on which they rely.

Following the trial, the parties may submit closing arguments in writing.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

The parties to the claim are required to disclose every document in their possession which is related or relevant to the claim.

Discovery and inspection of documents is governed by Order XI of the Code of Civil Procedure 1908 and rules thereunder. Pursuant to rule 14, the court may order the production by any party of documents in his or her possession or power relating to any matter in question in the proceedings. Every party to that proceeding is entitled to give notice to any other party to produce documents for the inspection of the party giving notice that are referred to in the party's pleadings or affidavits. An application to inspect documents other than those referred to in a party's pleading or affidavits or that are in its possession or power may be allowed by the court only if it is of the opinion that the document is necessary for disposing fairly of the suit or for saving costs.

Under articles 9 and 12 of the Qanun-e-Shahadat Order 1984 (being the relevant law governing evidence in Pakistan), an advocate's advice to a client and communications between an advocate and a client are privileged and their production in evidence cannot be compelled by a court. A person who is a full-time salaried employee cannot practice as an advocate; this privilege, therefore, will not apply to communications with in-house lawyers.

Privilege may be also be claimed by a public officer in respect of communications made to him in official confidence if (s)he considers that the public interest would suffer by disclosure thereof. Furthermore, there is a prohibition on giving of evidence derived from unpublished official records relating to any affairs of state except with permission of the head of department. The aforesaid privilege documents and communications concerning industrial or commercial activities carried on by the Federal Government or a Provincial Government or any entity set up or controlled by such Government.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Though documentary evidence that a party seeks to rely on must be submitted prior to trial along with the pleadings, parties are not required to exchange affidavits of witnesses of fact and experts prior to the trial.

The law of evidence in Pakistan is codified in the Qanun-e-Shahadat Order 1984. Before trial, each party is required to file a list of witnesses and documents that they intend to present during the trial. The claimant has the right to begin the evidence, followed by the defendant.

The evidence of the witness of fact or an expert is given orally in the presence of the judge or a commission appointed by the court. The evidence of the witnesses is taken down in writing in a narrative form by or under the directions of the judge or commission. In the recent amendments to the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory, provision has been made for evidence and the proceedings thereof to also be recorded by audio and video.

A witness is first examined-in-chief by the counsel of the party calling the witness. In some instances, evidence-in-chief is conducted by the witness reaffirming the contents of his or her affidavit in evidence in the presence of the court or the commission. In the recent amendments to the Code of Civil Procedure 1908 in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory, provision has been made for the affidavit in evidence to be construed as the examination-in-chief. The witness is also asked to present documents filed in support of the affidavit in evidence. Following the examination-in-chief, the opposing counsel is invited to cross-examine the witness orally. Thereafter, the counsel of the party calling the witness may re-examine the witness.

Any documents sought to be relied on are presented by the relevant witness during the examination-in-chief and documents with which a presumption of truth is attached can be produced in evidence under a statement of the counsel of the party which wants to produce such documents as evidence.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

There is no provision for appointment of experts by the court. Occasionally, however, a High Court or the Supreme Court appoints an *amicus curiae* to provide expertise, or insight that has a bearing on the issues in the case. The court does so mostly in cases involving complex questions of constitutional law.

Expert witnesses may be called by the parties to give testimony in trial under the Qanun-e-Shahadat Order 1984. There are no legal provisions setting out the duties of expert witnesses.

Expert opinion may be led by a party in order to enable the court to form an opinion on (a) foreign law, (b) science, (c) art and (d) identity of handwriting and finger impression. This enables expert evidence to be sought on complex subjects, including forensics, accounting, engineering and finance.

Ordinarily, the cost of an expert witness is paid by the party calling such witness.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Yes, in general, final judgment and decree of the court of first instance and orders on certain interlocutory applications, including applications for interim injunction, may be appealed, depending on the court, within 20 or 30 days. This is explained in more detail below.

Recent amendments introduced to the Code in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory made changes in the law relating to appeals. The amendments in Punjab were made through the Civil Procedure Code (Amendment) Ordinance, 2021, which was struck down by the Lahore High Court in May 2021.

Pursuant to the amendments, in Islamabad Capital Territory and Khyber Pakhtunkhwa, appeals against final judgments and decrees of courts of first instance must be filed within 30 days at the respective High Courts, which are required to pronounce judgment in appeal within 90 days. The right of first appeal is not restricted to any particular grounds. No appeal lies against the judgment in appeal of the High Court. Appeals against certain interlocutory orders (including orders on applications for interim injunction) must be filed within 30 days before the court one step higher (as per the

hierarchy of courts specified in the 1962 Ordinance) than the court which passed the order. Any party aggrieved by the order of the District Judge or Additional District Judge in appeal against an interlocutory order passed by a Civil Judge may within 30 days file a revision before the High Court on an obvious misapprehension of law or on jurisdictional grounds.

In Sindh, Balochistan and Punjab, an appeal against an interlocutory order or final judgment of a civil judge may be filed as of right, within 30 days of the order or judgment, either with the court of the district judge or the High Court, depending on the value of the suit. The appellate decision may be appealed on grounds of error of law by means of a second appeal. A decision of the court of the district judge in appeal may within 90 days be challenged in appeal before the High Court. An appeal from an order or judgment of a single judge of a High Court passed in original jurisdiction may be filed within 20 days before a division bench of that court, subject to the provisions of the Law Reforms Ordinance. Where no appeal lies against an order or judgment passed by the district judge in an appeal, such order or judgment may be challenged by filing a revision before the High Court.

In cases where parties do not have a right of second appeal, they may invoke the constitutional jurisdiction of High Courts to challenge appellate decisions on certain limited grounds.

Decisions of single judges of High Courts, when not exercising original jurisdiction, and otherwise, of division benches of High Courts may be appealed in the Supreme Court either by directly appealing or obtaining leave to appeal from the Supreme Court.

18. What are the rules governing enforcement of foreign judgments?

Decrees passed by the superior courts in certain reciprocating territories notified by the government of Pakistan may be executed in Pakistan as if they had been passed by a district court. Reciprocating territories include the United Kingdom, Fiji, Singapore, Australia, New Zealand, Kuwait, Turkey and the United Arab Emirates. A certified copy of the decree is required to be filed with the execution application in the district court where the decree is required to be enforced.

If a foreign decree sought to be enforced is not passed by a superior court of one of the abovementioned jurisdictions, the decree holder will have to initiate a fresh suit in Pakistan on the basis of the foreign decree.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

The court has the power to grant costs calculated on the basis of actual costs incurred, subject to limits, which may vary between 25,000 and 100,000 Pakistani rupees. This limit has been further enhanced in the Islamabad Capital Territory.

Unlike many other jurisdictions, claimants are not required to provide security for the opposing party's costs. The court has the power to require the claimant to provide security for the costs of the defendant in limited circumstances, including where the plaintiff resides outside Pakistan and does not possess sufficient immovable property in Pakistan.

Ordinarily, when awarded, costs are limited to amounts paid by way of court fees.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

Litigants may bring a suit jointly if their right to sue arises out of the same transaction or series of acts or transactions, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise. Further, parties may with the permission of the court sue on behalf of or for the benefit of all persons interested. In those cases, notice is required to be given to all persons of that action. While the bringing of a representative action is allowed, it is uncommon in practice. It is more common for litigants to invoke the constitutional jurisdiction of the High Court or Supreme Court to seek writ remedies or directions for enforcement of fundamental rights against the state or any instrumentality thereof. Those actions usually take the form of public interest litigation.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

The provisions of Order I, rule 10 of the Code allow third parties whose presence is necessary for adjudication of a claim or otherwise required for effective adjudication thereof, to be joined into the proceedings, either on the application of a party or by the court on its own motion.

Except in Punjab, there is no specific provision of the Code enabling the court to consolidate suits. In other parts of Pakistan, courts consolidate two or more suits in exercise of their inherent powers. This is done where the subject matter of suits is common, in order to save the parties from multiplicity of proceedings, delay and expenses. When suits are consolidated, common issues are framed, a evidence is heard at a single trial and common judgment is delivered by the court.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

There are no express rules in relation to using third-party funding and the practice is uncommon. In the absence of rules, the parties are free to make contractual commitments in respect of the funding of litigation and the distribution of any proceeds.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

Before the COVID-19 pandemic the Supreme Court had already established a video link facility to connect its branch registries in provincial capitals with the principal seat in Islamabad. Towards the end of 2020, during the COVID-19 pandemic, as a one-off measure, the Supreme Court conducted a hearing entirely remotely, with senior counsel attending a hearing from home using video links. There are plans to implement e-court systems across the board in the Supreme Court, enabling counsel to attend hearings from their homes and offices.

During the first wave of the pandemic, most courts in Pakistan suspended regular work and heard only criminal and urgent civil cases. The Islamabad High Court instituted an e-court procedure whereby counsel can apply to attend hearings at the High Court or its subordinate district courts on Skype. Certain benches of the Lahore High Court have allowed counsel to attend hearings remotely and there are plans to immediately expand this facility to all benches of the High Court. Other High Courts are yet to establish such facilities for themselves or their subordinate courts.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The main advantage is that though proceedings are commonly subject to delays, the courts will in most cases interim relief in fit cases expeditiously, even against government departments and state-owned entities. Unlike orders for interim relief granted by foreign courts or arbitral tribunals, such orders when granted by Pakistani courts in Pakistan are directly enforceable against Pakistani defendants. Orders for interim injunction may be sought to be enforced by resort to provisions that seek to punish the violation of such orders. The Court may order attachment of property and detention of a person failing to comply with an order of interim injunction. Further, a party that disobeys the order can be subjected to contempt proceedings before the relevant High Court, where a finding of contempt can be punished with imprisonment, which may extend to six months, or with a fine, which may extend to 100,000 Pakistani rupees or with both.

The main disadvantage of litigating international commercial disputes in Pakistan is delay. Courts grant adjournments liberally at the request of a party, are overburdened with heavy caseloads, generally do not use technology and have not implemented modern methods of case management. Final decision in a civil suit can take between five to 10 years, depending on the court in which it is instituted.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

With the legal recognition to ADR methods in Sindh, Punjab and the Islamabad Capital Territory, the most likely growth area in the next five years is mediation under court-annexed mediation centers addressing commercial disputes referred by the courts.

The Islamabad ADR Act 2017, Punjab Alternate Dispute Resolution Act 2019 and the Code of Civil Procedure (Sindh Amendment) Act, 2018 also apply to commercial disputes. These statutes empower the court to refer litigant parties to ADR. The closure of courts for normal work during COVID-19 lockdowns due to the absence of use of technology for e-filing and remote hearings has exacerbated the backlog of cases have further thrown into relief the inherent disadvantages of litigation as a means for resolution of commercial disputes. During this period, a number of arbitration centers have been established in Pakistan and there is an increased

awareness amongst members of the legal profession and businesses of the potential of ADR as an effective means of dispute resolution. The enactment of a new comprehensive statute to govern arbitration, as has been proposed, will further encourage parties to opt to arbitrate disputes.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

Courts in Pakistan have thus far not made any significant use of technology. Therefore during the COVID-19 lockdowns, most courts in Pakistan had to suspend regular work and hear only urgent cases. This inevitably exacerbated the issues of delay and added to the backlog of cases on courts' dockets. At the same time, stakeholders, including within the judiciary, were able to witness the ability of courts in other jurisdictions to continue functioning largely by adopting technological solutions.

Amendments to the Code in Islamabad Capital Territory and Khyber Pakhtunkhwa in 2020 and the 2021 Ordinance in Punjab make provision for remote hearings, e-filings and require courts to maintain electronic records of proceedings in suits. Such provisions are expected to be implemented in the next 5 years and will impact all civil proceedings, including those in commercial disputes.

Though the above amendments were not introduced in response to the experience of the courts during the lockdowns, their enactment came at a time when discussions were already taking place as to the measures that courts could take to continue functioning. At the time, some courts had already instituted limited procedures to enable remote hearings. The amendments, particularly their provisions allowing for use of technology, therefore garnered more attention and provided a legal basis for use of technology.

Enabling documents to be filed and served electronically and conducting hearings remotely are measures that require use of only basic technology. However, given that courts in Pakistan had thus far not made any significant use of technology, the measures have the potential to be hugely impactful in the conduct of litigation in general, including in respect of commercial disputes.

27. What, if any, will be the long-term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

During the COVID-19 lockdowns, most courts in Pakistan suspended regular work and heard only urgent cases. Though the response of the courts was slow at first, progress towards implementation of technology has been made during the past year. The Islamabad High Court instituted an e-court procedure whereby counsel can apply to attend hearings at the High Court or its subordinate district courts on Skype. Certain benches of the Lahore High Court have allowed counsel to attend hearings remotely and there are plans to immediately expand this facility to all benches of the High Court. Commercial courts established in Punjab under the 2021 Ordinance also conduct remote hearings and accept documents filed electronically. Other High Courts are yet to establish such facilities for themselves or their subordinate courts. The Supreme Court in 2019 established video link facilities to connect its branch registries in provincial capitals with the principal seat in Islamabad. In late 2020, during the covid-19 pandemic, as a one-off measure, the Supreme Court conducted a hearing entirely remotely, with senior counsel attending a hearing from home using video links. There are plans to implement e-court systems across the board in the Supreme Court, enabling counsel to attend hearings from their homes and offices. These developments were inconceivable before the pandemic even though the requisite technological solutions were widely available.

Nevertheless, it is too early to conclude whether the adoption of technology by the courts will be a lasting legacy of the pandemic. The measures to enable electronic filing and service and remote hearings are yet to be widely implemented in many provincial High Courts and large parts of the subordinate judiciary. These measures have been given legal basis in the recent amendments to the Code in Islamabad Capital Territory and Khyber Pakhtunkhwa, and in the 2021 Ordinance in Punjab, all of which also introduce other reforms aimed at addressing delays which plague civil litigation. In order to meaningfully change the way civil litigation is conducted in the country, similar amendments will need to be made in the rest of the country and implemented across the board. Courts will also need to be empowered to visit litigants with proportionate consequences (such as costs) for their actions in the conduct of proceedings.

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