

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.

II. JUDGES AND JURIES

Role of the judge and the jury in civil proceedings

In Pakistan, judges are the exclusive arbiters of law and fact. There is no jury system in Pakistan. As in most common law jurisdictions, the Pakistani legal system is adversarial, and the judges in Pakistan adopt a passive role when hearing cases.

A judge exercising civil jurisdiction is bound to conduct every case in accordance with the procedural requirements of the Code of Civil Procedure 1908, including determination of preliminary issues of jurisdiction, limitation, maintainability, compliance with procedural formalities (payment of court fees, process fees, etc), disposal of applications, framing of issues, appointment commissions for the recording of evidence, supervising recording and deposition of evidence and cross-examination, and passing orders, judgments or decrees.

III. LIMITATION ISSUES

Time limits for bringing civil claims

Time limits for filing of all nature of civil claims in the concerned civil courts in all provinces of Pakistan and Islamabad Capital Territory are governed by the Limitation Act 1908 (the Limitation Act), which provides for various time limits for bringing different kinds of claims, ranging up to 12 years with most civil claims have a limitation period of three to six years.

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.

IV. PRE-ACTION BEHAVIOUR

Are there any pre-action considerations the parties should take into account?

No action is generally required to be taken before the filing of a suit of a civil nature 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.

V. STARTING PROCEEDINGS

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Civil proceedings are commenced with the presentation of a claim (plaint) in the relevant court of first instance in accordance with the procedural requirements of the Code of Civil Procedure 1908 and payment of requisite court fees. Upon a perusal of the plaint by the judge, or in some cases, a judicial officer, summons along with the claim documents are issued to be served on the defendants or respondents through prescribed modes of service for filing of a reply in response to the claim by a fixed date. Summons are ordinarily served by registered post and personal service; however, if service is unsuccessful, the court can order service by several means, including service by publication in a newspaper.

Many courts in Pakistan are currently facing a lack of capacity owing to an overwhelming number of pending cases, inadequate number of judges and a leniency in granting adjournments. 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.

VI. TIMETABLE

Typical procedure and timetable for a civil claim

All civil claims begin by the filing of a claim in the relevant court following which the court will issue summons to the counterparty for filing of a reply (written statement) by a fixed date, not ordinarily exceeding 30 days.

If the claim is accompanied by an interlocutory application, that application is fixed before the court for order. At this stage, the court decides whether a notice of the application is to be issued to the opposing party and the court may pass a preliminary order on that application, such as an ad interim injunction. Thereafter, that application is fixed before the court for hearing. The notice of the application invites the opposing party to file a reply to such application by the hearing date. If a reply is filed, the claimant is ordinarily allowed an opportunity to file a rejoinder. Once the court is satisfied that it must proceed with the hearing of the application, it invites arguments from both sides and passes an order on the pending interlocutory applications.

Once a reply has been filed to the claim or the opposing party has been barred from filing a reply, the matter is fixed in court for settlement of issues. At that stage, the court settles issues in the case that are decided on the basis of the pleadings filed by the parties. Those issues are the various questions of law and fact that are required to be answered in the proceedings. Following the settlement of issues, the case is fixed for the recording of evidence. After the conclusion of evidence, the matter is fixed in court for arguments and both parties are invited to make oral submissions in court before the court gives judgment and decree on the matter.

Although the court and the procedural rules governing the matter will provide time periods for the various phases of the matter and fixed dates for filing of documents, it is uncommon for those procedural timelines to be strictly enforced. It is more common for parties to seek and be granted adjournments, as a result of which, claims can take five or more years to conclude.

VII. Case Management

Can the parties control the procedure and the timetable

Ultimately, the timetable of a case is in the hands of the judge responsible for enforcing any requirements, including timelines mandated by law. However, parties are able to make representations to the judge to shorten or extend timelines and judges are generally lenient when it comes to requests for adjournments.

VIII. EVIDENCE – DOCUMENTS

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no general obligation to preserve documents or other evidence pending trial. 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. The Code of Civil Procedure 1908 provides for focused document production rather than US-style discovery.

IX. EVIDENCE – PRIVILEGE

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Under articles 9 and 12 of the Qanun-e-Shahadat Order 1984 (relevant law governing evidence in Pakistan), an advocate's advice to a client and communication 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.

X. EVIDENCE – PRETRIAL

Do parties exchange written evidence from witnesses and experts prior to trial?

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

XI. EVIDENCE – TRIAL

How is evidence presented at trial? Do witnesses and experts give oral evidence?

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 witness 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.

A witness is first examined-in-chief by its own counsel. 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. 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 orally cross examine the witness. Thereafter, the witnesses own counsel 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 through statement of the counsel of the party who wants to produce it in his or her evidence.

XII. INTERIM REMEDIES

What interim remedies are available?

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

- arrest;
- attachment before judgment;
- injunction;
- 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.

These interim remedies may also be granted in a suit seeking to enforce a foreign judgment.

XIII. REMEDIES

What substantive remedies are available?

The civil courts in Pakistan are empowered to grant a host of substantive remedies, which are primarily set out in the Specific Relief Act 1877 and include:

- damages including interest but not including punitive damages;
- possession of movable or immovable property;
- specific performance of a contract;
- rectification of an instrument;
- rescission of a contract;

- cancellation of an instrument;
- declaratory decrees;
- perpetual injunction;
- mandatory injunction; and
- recovery of money, including interest.

XIV. ENFORCEMENT

What means of enforcement are available?

If a judgment debtor fails to satisfy a decree, the decree holder may file execution proceedings to enforce compliance with the decree. In execution proceedings, the court may order:

- delivery of any property specifically decreed;
- attachment and sale or by sale without attachment of any property;
- arrest and detention in prison;
- appointment of a receiver; or
- other directions that the nature of the relief granted may require.

If a litigant fails to comply with an interim order of a court, the court can pass a further interim order to force compliance with that order.

In the event of disobedience of a court order, the 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 fine which may extend to 100,000 Pakistani rupees or with both.

XV. PUBLIC ACCESS

Are court hearings held in public? Are court documents available to the public?

Yes, ordinarily all court hearings are held in public.

Court documents are available to the public for inspection and copies may be obtained for a nominal fee.

XVI. COSTS

Does the court have power to order costs?

The court has the power to grant costs calculated on the basis of actual cost incurred, subject to limits which may vary between 25,000 and 100,000 Pakistani rupees. 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.

XVII. FUNDING ARRANGEMENTS

Are ‘no win, no fee’ agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency or conditional fee arrangements are not permissible in Pakistan. There are no express rules in relation to using third-party funding and the practice is uncommon. In the absence of rules, parties are free to make contractual commitments in respect of the funding of litigation and the distribution of any proceeds.

XVIII. INSURANCE

Is insurance available to cover all or part of a party’s legal costs?

Insurance policies for legal costs are not available in Pakistan. However, legal costs may be covered by other policies such as third-party liability, which are available.

XIX. CLASS ACTION

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

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.

XX. APPEAL

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Under the procedural laws of Pakistan, there are multiple appellate remedies that can be availed by an aggrieved litigant including appeal, reference, review and revisions. The remedy of appeal is not restricted to any particular grounds and parties who are dissatisfied with a judgment and decree of a court of first instance have the right to file an appeal before the relevant appellate forum.

In most cases, parties are entitled to make a further appeal and may have remedies against that further appellate order. Even in cases where parties do not have a further right of appeal, parties can still challenge appellate decisions, on certain limited grounds, by invoking the constitutional jurisdiction of the High Courts.

XXI. FOREIGN JUDGMENTS

What procedures exist for recognition and 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 shall have to initiate a suit in Pakistan on the basis of the foreign decree.

XXII. FOREIGN PROCEEDINGS

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

This requires that a certificate, signed by the consular officer of the foreign country of the highest rank in Pakistan, is sent to the High Court in whose appellate territorial jurisdiction the witness resides through the federal government; a letter of request issued by the foreign court be sent to the High Court through the federal government; or a letter of request issued by the foreign court be produced before the said High Court by a party to the proceeding. The High Court shall issue a commission for examination of the witness if satisfied from above said certificate or letter of request that:

- the foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it;
- the proceedings are of civil nature; and
- the witness is residing within the limits of the High Court's appellate jurisdiction.

When the commission has duly executed its duty, its report shall be returned together with the evidence taken to the High Court, which shall forward it to the federal government along with the letter of request for transmission to the foreign court.