ADVOCATES AND COUNSELS.

MONTHLY LEGAL UPDATE

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This update provides a brief overview of the recent legal changes in Pakistan including legislative and judicial developments across Pakistan.

PAKISTAN LAND PORT AUTHORITY ACT 2025

INTRODUCTION

This is a new law that came into force in September 2025. Ports are traditionally divided into sea-ports, airports and land-ports. Pakistan has more than 20 dry or land ports throughout the country. However there has been no integrated system for the management, operation and security of those land-ports. This law is passed to make provisions for the declaration, development, operation, management and security of land-ports by a central authority in a coordinated and integrated manner.

The law is not in derogation of existing laws (e.g. the Customs Act 1969) covering the same subject matter; however it is provided that in case of conflict between the provisions of any existing law and this law, the provisions of this law shall have overriding effect.

MAIN PROVISIONS OF THE LAW

1. The Authority is constituted vide Section 3 of the Act as a body corporate having perpetual succession. The composition of the Authority is given in Section 7 of the Act while its powers and functions are given in Section 9 of the Act.
2. Like a board of directors which manages a company, the Authority is to be managed by a Governing Council established under Section 4 of the Act which also lays down the composition of the Governing Council.
3. ‘Land Port’ is defined by Section 2 (l) of the Act as ‘*land port shall mean any land customs station, border crossing point, or any area that provides or is intended to provide controlled entry into or departure from Pakistan of goods, vehicles and passengers, with terminal services and facilities at the border, excluding seaports and airports*.’
4. Pursuant to Section 18, the Authority has power to declare, amend, alter or extend the limits of any land port after the same has been duly verified under the Customs Act 1969 for the purposes of the Act.
5. Section 20 lays down for the establishment of a Land Port Management Board headed by a Controller. The Management Board shall be responsible for monitoring and regulating the activities of Land Port Operators, Service Providers and coordinating with other Government Agencies for smooth operations of the land port and for implementing Border Control as per provisions of the Act.
6. According to Section 23 (2) of the Act, the Authority may enter into a contract or arrangement with any natural or legal person or entity whether national or international and may outsource land port operations or any of its functions or activities through any mode including public-private partnership. Section 24 authorises the Authority to grant licenses for land port operations.

7. Section 25 relates to offences under the Act. Section 28 authorizes the Federal Government to issue policy directions to the Authority. Section 29 authorizes the Authority to charge fees, rents etc and impose levies. Section 37 and 38 establish a system of filing complaints and disposal thereof by the Adjudication Board. An appeal will lie against the order of the Adjudication Board to the Appellate Tribunal.

PAKISTAN STATE OIL COMPANY LIMITED v M/s GILLANI (Pvt) LTD (2025 CLD 1130)

INTRODUCTION

Civil courts have compulsory jurisdiction in all civil matters to hear and determine a case and such jurisdiction cannot be ousted by agreement of the parties to the dispute. (Section 9 Code of Civil Procedure 1908; Section 28 Contract Act 1872). However in case of an arbitration agreement special procedure is allowed (Exception 1 to Section 28 of the Contract Act 1872; Section 34 of the Arbitration Act 1940). Under Section 34 of the Arbitration Act, where a party to an arbitration agreement, commences legal proceedings, the Court has discretion to refuse, in the first instance, to assume jurisdiction and decide the suit and instead refer the parties to arbitration.

The question might arise whether the Court instead of referring the case to the arbitration, may itself decide the suit or whether the suit must invariably be referred to be decided through arbitration. In this instance, reference may be made to Section 4 (2) of the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral Awards) Act 2011 where Court in mandatory language is enjoined (use of word ‘shall’) to refer the case to arbitration. However, in Section 34 of Arbitration Act, the language used is permissive (‘may’) which gives the Court discretion to retain the jurisdiction and decide the case itself.

Ultimately, it may be asked whether after referring the case to arbitration, the Court becomes divested of its seisen and jurisdiction of the case, or whether in certain circumstances the case may be decided by the Court where arbitration procedure does not ensure any outcome. The present case relates to this proposition.

FACTS OF THE CASE

The Appellant/Plaintiff filed a suit for recovery before the Sindh High Court. Respondent No. 1/Defendant No. 1 filed an application u/s 34 of the Arbitration Act before the trial court whereupon the proceedings of the suit were stayed and the case was referred to arbitration. The arbitration proceedings however could not commence despite lapse of considerable time. The Appellant thereafter filed an application u/s s151 of CPC for restoration of suit which was allowed. The arbitration agreement was thus superseded and proceedings in suit commenced. The trial court recorded the evidence and thereafter dismissed the suit. The trial Court while dismissing the suit held that order resurrecting the suit and superseding the arbitration agreement was void as the jurisdiction was irregularly assumed by the Court. Further the Court held that after referring the matter initially to arbitration, The Court had become functus officio, and thereafter could not have resumed jurisdiction and superseded the arbitration agreement.

DECISION OF THE COURT

1. Insofar as assumption by Court of jurisdiction upon suppression of the arbitration agreement through irregular exercise of the power was concerned, the Appellate Court held that the finding of the trial court on this issue was based on the contention that since the application seeking supersession of the arbitration agreement was filed u/s 151 CPC, the application was not competent as it ought to have been filed under proviso to Section 25 of the Arbitration Act. The Appellate Court held that wrong citing of any provision of law under which an application is made is not fatal if the application is otherwise maintainable.
2. Insofar as matter of divestment of jurisdiction was concerned, it was held by the Appellate Court that the Court retains jurisdiction even after referral of the matter to arbitration and in case of failure of arbitration process was competent to resume jurisdiction and decide the matter referred to arbitration.
3. The judgment of trial court alongwith decree was set aside and suit was remanded for decision on merits from the final arguments stage.

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