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# NEWSLETTER

Editor: **Barrister Saquib Mangiro**



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# Overview of SAARC Arbitration Council (SARCO)

SAARC Arbitration Council (SARCO) is one of the Specialized Bodies of South Asian Association for Regional Co-operation (SAARC), comprising the Member States of Islamic Republic of Afghanistan, People's Republic of Bangladesh, the Kingdom of Bhutan, Republic of India, Republic of Maldives, Federal Democratic Republic of Nepal, Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka.

It is an inter-governmental body mandated to provide a legal framework/forum within the region for fair and efficient settlement of commercial, industrial, trade, banking, investment and such other disputes, as may be referred to it by the member states and their people.

With these objectives in mind, SARCO aims to establish a quality alternative dispute resolution forum, that would act on behalf of governments and the people of SAARC Member States, having professionals, retired judges and eminent lawyers from Member States on its Panel of Arbitrators and conciliators for the out-of-court resolution of disputes, arising from commercial agreements, usually by including SARCO model clause for the arbitration of future disputes in their contracts in domestic and international commercial trade, investment, transactions and in similar other international relationships.

## **VISION**

To become the most sought-after Arbitration Forum in the region by establishing ourselves as a centre of excellence for Alternative Dispute Resolution.

## **MISSION**

To deliver fair, cost-effective, expeditious and high quality arbitral and conciliatory services for the resolution of trade, commercial, investment and similar disputes, thereby promoting business growth in the region.

## **OBJECTIVES AND FUNCTIONS**

- Provide a legal framework within the region for fair and efficient settlement through conciliation and arbitration of commercial, investment and such other disputes as may be referred to the Council by agreement;
- Promote the growth and effective functioning of national arbitration institutions within the region;
- Provide fair, inexpensive and expeditious arbitration in the region;
- Promote international conciliation and arbitration in the region;
- Provide facilities for conciliation and arbitration;
- Act as a coordinating agency in the SAARC dispute resolution system;
- Coordinate the activities of and assist existing institutions concerned with arbitration, particularly those in the region;
- Render assistance in the conduct of ad hoc arbitration proceedings;
- Assist in the enforcement of arbitral awards; and
- Maintain registers/panels of: (i) expert witnesses, and (ii) suitably qualified persons to act as arbitrators as and when required; and
- Carry out such other activities as are conducive or incidental to its functions.

For more information contact the SAARC Arbitration Secretariat at [info@sarco-sec.org](mailto:info@sarco-sec.org).

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## Message by the Secretary General, SAARC



I am glad to learn that the SAARC Arbitration Council (SARCO) is bringing out the Tenth Edition of its Annual Newsletter highlighting its activities and achievements during 2023.

SARCO is an important organ of SAARC. Over the years, SARCO has been providing, not only its services for swift and transparent resolution of trade disputes but has also been playing a vital role in fostering awareness and understanding of alternative dispute resolution mechanisms by conducting a number of research studies, workshops, seminars and training sessions to impart the knowledge and skills necessary in arbitration.

Looking ahead, SARCO's focus should remain on continuous improvement and responsiveness in the face of evolving global business dynamics and challenges. SARCO should also continue to explore innovative ways to streamline its processes, enhance its visibility and accessibility, and strengthen the overall efficacy of the arbitration services that are aligned with international best practices.

I convey gratitude to the Director General and his team, esteemed Members of the Governing Board and Panel of Arbitrators and all stakeholders who have been contributing to the success of SARCO.

I am confident that SARCO will continue to work to create an environment where disputes are resolved efficiently, fostering trust and collaboration among regional businesses, thereby contributing to the growth and prosperity of our region.

H.E. Md. Golam Sarwar  
Secretary General,  
SAARC





## Message by the Director General, SARCO



Dear Readers, I am pleased to present the 10th Edition of the SARCO Newsletter for the year 2023. Since our previous issue, there have been numerous activities that have been held with our valued partners in the SAARC member countries.

In line with our commitment to advancing Alternative Dispute Resolution (ADR) in the SAARC region, SARCO has diligently executed a diverse array of Program of Activities. Notable highlights include impactful webinars held in Bangladesh and India, engaging workshops conducted in Bhutan and the Maldives, and insightful seminars hosted in Pakistan and Sri Lanka. These activities not only fostered knowledge exchange but also strengthened collaborative ties, contributing to the overall promotion of ADR within our regional framework.

The main objectives of SARCO, rooted in fostering regional cooperation, facilitating fair dispute resolution, and upholding the principles of the SAARC Charter, have been robustly pursued throughout 2023. Our purpose, guided by the spirit of collaboration and inclusivity, has found expression in various initiatives, including the establishment of a Panel of Arbitrators and the expansion of our outreach through webinars, workshops, and seminars. These efforts align with SARCO's commitment to providing efficient and accessible ADR mechanisms for the SAARC community.

As my tenure as the Director General of SARCO draws to a close in 2024, I want to express my heartfelt gratitude to each member, partner, and stakeholder who has been instrumental in the success of SARCO's initiatives. It has been a privilege to serve in this capacity, and I am confident that SARCO, under new leadership, will continue to thrive and evolve in its pursuit of regional cooperation and effective dispute resolution.

In conclusion, let us celebrate the accomplishments of 2023, acknowledge the challenges that lie ahead, and recommit ourselves to the vision of SARCO as a beacon of collaboration within the SAARC community.

Thank you for your unwavering support, and I look forward to witnessing SARCO's continued growth and success in the years to come.

Happy Reading and Godspeed Ahead!

Md. Helal Chowdhury  
Director General,  
SARCO



## Intellectual Property and Information Technology related Alternative Dispute Resolution



**Barrister**  
**Mohammed Forrukh Rahman**  
Advocate of the  
Supreme Court of Bangladesh

Intellectual Property refers to legal rights that protect creations of the mind, such as inventions, designs, trademarks, and artistic works. Intellectual Property rights provide exclusive ownership and control over these creations, enabling

individuals and organizations to protect and monetize their innovations. Information Technology on the other hand refers to the use, development, and management of computer-based systems, networks, and software to store, process, transmit, and retrieve information.

IT and IP are in many ways interconnected, for example (a) IT encompasses software development, and software can be protected under copyright law as a form of intellectual property. Software developers and companies can copyright their software to prevent others from copying or using it without permission. (b) Patents protect inventions and technological innovations. In the IT field, patents can be obtained for novel and non-obvious inventions, such as new algorithms, hardware designs, or software processes. Patents provide exclusive rights to the inventors, allowing them to prevent others from making, using, or selling their inventions without permission. (c) IT plays a significant role in branding and marketing efforts. Trademarks are valuable intellectual property assets that protect brand names, logos, and symbols associated with goods or services. IT systems are often used to create, manage, and protect trademarks, ensuring their proper use and preventing infringement. (d) Trade secrets are valuable, confidential business information that

provides a competitive advantage. In the IT realm, protecting trade secrets often involves robust IT security measures to safeguard sensitive data, proprietary algorithms, customer lists, or manufacturing processes from unauthorized access or theft. (e) The digital nature of IT has given rise to challenges related to copyright infringement and intellectual property piracy. Unauthorized copying, distribution, or use of copyrighted software, music, movies, or other digital content is a significant concern. IT systems and technologies are employed to detect and prevent such infringements and protect intellectual property rights.

IT and IP have become more interconnected than ever before due to several factors like Digital Transformation, Software and Technology Innovation, IT advancements, including software development, artificial intelligence, machine learning, and Internet of Things (IoT), Data and Data Protection, Online Branding and Trademark Protection due to growth of e-commerce and online platforms and Dispute Resolution and Enforcement.

When it comes to dispute resolution, there are certain similarities between IT and IP. Here are some key similarities: (a) Disputes in both IT and IP often require specialized knowledge and expertise. IT disputes may involve complex technical issues related to software, hardware, networks, or data security. IP disputes may involve intricate legal concepts, such as patent infringement, trademark dilution, or copyright violations. In both cases, resolving the disputes effectively often requires the involvement of professionals with expertise in the relevant domain. (b) Alternative dispute resolution methods like mediation and arbitration are commonly used in both IT and IP cases. These methods aim to resolve disputes outside of traditional court proceedings, offering a more efficient and cost-effective approach. Mediation involves a neutral third party helping the parties reach a mutually acceptable resolution, while



arbitration involves a neutral arbitrator or panel making a binding decision. Both methods can be beneficial in resolving complex IT and IP disputes. (c) In both IT and IP disputes, technical evidence plays a crucial role. In IT disputes, technical evidence may include source code analysis, system logs, network configurations, or forensic data. In IP disputes, technical evidence can include prototypes, design documents, patent specifications, or expert opinions. The presentation and analysis of such technical evidence are essential for understanding the issues at hand and reaching a resolution. (d) IT and IP disputes often involve international or cross-border elements, which can pose jurisdictional challenges. In the case of IT disputes, where online activities and data may transcend geographical boundaries, determining the appropriate jurisdiction for resolving the dispute can be complex. Similarly, IP disputes may involve infringements or violations occurring in multiple jurisdictions, requiring careful consideration of applicable laws and international treaties. (e) Both IT and IP disputes rely on precedents and case law to interpret and apply relevant legal principles. Precedents set in previous cases help guide judges, arbitrators, and mediators in determining the outcomes of current disputes. As technology evolves and new legal challenges emerge, IT and IP dispute resolution processes adapt and develop through the establishment of new precedents and case law.

There are institutions and organizations that deal with either IT and IP or both alternative disputes resolution. These institutions provide specialized services and expertise to help parties resolve conflicts related to intellectual property, Information Technology and/or IP in the context of information technology. Here are a few examples: (a) World Intellectual Property Organization (WIPO): WIPO is a specialized agency of the United Nations that deals with intellectual property matters. It provides a range of services, including mediation, arbitration, and expert determination, for resolving disputes related to patents, trademarks, copyrights, and other forms of intellectual property. WIPO's services cover various technological fields, including IT. (b) International Chamber of Commerce (ICC): The ICC offers dispute resolution services, including arbitration and mediation, through its International Court of Arbitration and International Centre for ADR

(Alternative Dispute Resolution). The ICC handles commercial disputes, including those involving intellectual property rights in the context of IT and other industries. (c) Silicon Valley Arbitration and Mediation Center (SVAMC): SVAMC is a nonprofit organization that focuses on alternative dispute resolution in the technology sector. It offers mediation, arbitration, and expert evaluation services for technology-related disputes, including those involving intellectual property. SVAMC collaborates with leading technology companies, law firms, and industry experts to provide efficient and effective conflict resolution. (d) American Arbitration Association (AAA): The AAA is a widely recognized organization that offers arbitration, mediation, and other dispute resolution services across various industries, including technology and intellectual property. The AAA has offices and panels of arbitrators and mediators in Silicon Valley who handle IT and IP disputes. (e) There are few other institutions who handle IT-related disputes as part of their broader arbitration services. Besides, many countries have intellectual property offices/tribunals that address IP and IP in the context of IT disputes.

The common IP disputes, IT disputes and/or IP disputes in the context of IT are as follows: (a) breach of licensing agreements (e.g., trademarks, patents, copyright, industrial design, software), access by third party, continuation/retention etc (b) research and development agreements and related IP rights (c) technology transfer agreements (d) distribution agreements, franchising agreements (e) Information Technology agreements (f) data processing agreements (g) joint venture agreements on development and research etc (h) consultancy agreements (i) art marketing agreements (j) digital copyright and piracy (k) copyright collective management (l) trade secret and cyber security etc.

Traditional forms of disputes resolution through court system are often found ineffective in the context of IT and IP disputes due to several lack of resources and delay. However, in the context of alternative dispute resolution of rapidly evolving IT and IP industry, there are still lot of scope for growth in terms of resources, building institutional capacity, reaching international treaty etc.





## Pakistan's Mediation Movement: The Dawn of a new era of Dispute Resolution



**M. Shahzar Ilahi,**  
Co-Founder & Associate Director,  
Musaliha International Center for  
Arbitration & Dispute Resolution  
(MICADR)

A father plays with his two children in one of the two freshly mowed lawns between the grey structures of the main building and the Chief Justice Complex of the Old Islamabad High Court. Sitting at a nearby bench is

the father's lawyer overseeing the meeting scheduled today granted graciously by the family judge. The children's mother, waiting in the adjacent lawn, is intimidated by her lawyer that time is up. The two proceed to collect the children. The father hands them over after tight hugs and teary eyes. The mother looks visibly distraught as she walks away while the children wave goodbyes to their father until they meet him again next month. The case for the custody of children continues, with only guestimates in terms of when it shall end. The family judge, after all, faces a cause list of more than eighty cases a day.

Pakistan faces a case pendency of 2.3 million with only 4,300 judges across the country to adjudicate them. Roughly 60,000 cases are pending before the 16 judges of the highest court of law in the land. According to official figures by the Law and Justice Commission of Pakistan, it takes 15 years on average for a civil case to conclude. The highly litigious nature of our society, lack of alternative mechanisms to

resolve dispute and dearth of an effective case management system to filter frivolous suits and FIRs are primarily to be blamed for the enormous case backlog. Countries faced with similar challenges have tried various methods to rid themselves of their case backlogs however, only one mechanism seems to stand out in terms of its efficiency and effectiveness: Alternative Dispute Resolution (ADR).

Coined at the Global Pound Conference series held in the late 1970s in the US, the term Alternative Dispute Resolution (ADR) refers to legally and constitutionally-recognized mechanisms and methods of settling disputes outside courts. Negotiation, mediation, settlement conferences and arbitrations are all forms of ADR with mediation taking the center stage as one of the most successful, globally-tested dispute resolution mechanism being practiced around the world. Mediation is a process where a negotiated settlement between disputing parties is facilitated by a trained facilitator known as the Mediator. Since its formal incorporation into the English Justice system following the Woolfe Reforms (1998), cases worth £190 billion have been successfully resolved through mediation in the UK. Turkiye has resolved more than 3 million cases since the enactment of the Turkish Mediation Law in 2012 and Chinese courts referred 5.1 million cases in 2020 alone to court-annexed mediation centers. 56 nations are now signatory to the Singapore Convention on Mediation that allows cross-border settlements to be effectively enforced in member states. What is most encouraging is that Pakistan has formally welcomed mediation and, so far, with open arms.





Following the Arbitration Act, 1940, the legislature formally introduced mediation into Pakistan's legal system through a series of laws and amendments. The Islamabad ADR Act 2017, the Amendments to CPC sections 89A & B in Sindh, the Punjab ADR Act 2019, the KPK ADR Act 2021, the Balochistan ADR Act 2022 and the recent Gilgit Baltistan Mediation Bill 2023 (passed by the Gilgit-Baltistan Cabinet and awaiting GBA approval) lay down a robust mechanism of mediation across the country that allow for all civil, family, commercial and similar disputes, along with compoundable criminal offences with punishments up to three years to be mediated by accredited and notified mediators. As per the aforementioned laws, minutes or details of a mediation proceeding are protected and confidential, the maximum time for a mediation is between 45 to 75 days and robust regulatory oversight mechanisms have been established to ensure quality of mediators and mediation centers.

The Supreme Court ADR Task Force headed by Justice Ijaz ul Ahsan with one High Court judge and Law Department representatives from each jurisdiction is making strides in institutionalizing a robust mediation ecosystem across Pakistan. More than 250 internationally-accredited mediators and 1,000 mediation advocates have been trained and notified across Sindh, Islamabad and Gilgit Baltistan alone and various ADR Centers offering domestic and international mediation services have been notified by the Federal Government and respective provincial High Courts.

Most recently, the Islamabad High Court Court-Annexed Mediation Center was launched making it easy for the district judiciary to refer matters to a court-managed mediation facility. The presence of Internationally Accredited Mediators in benches across higher judiciary such as Justice Jawad Sarwana, Justice Sardar

Ejaz Ishaq Khan and Justice Mansoor Ali Shah, has added the much-needed momentum to Pakistan's Mediation Movement.

Pilot interventions led by provincial governments, High Courts and civil society organizations such as the Legal Aid Society (LAS) have demonstrated incredible results. What is critically needed is for the government to create a mass awareness campaign, informing the general public of existing mediation ecosystems. Police Dispute Resolution Centers, District Administration offices and Local Governments are only some of the many formal structures that need to be capacitated and linked to existing mediation ecosystems in order to provide expeditious and expedient dispute resolution services to individuals, families and entities alike. Members of the legal fraternity must be trained as Mediation Advocates to effectively represent their clients in mediation proceedings. The recent training of 750 members of the Sindh High Court Bar Association as mediation advocates is testament to the increasing appetite for mediation among the legal fraternity.

More importantly, given that investors are always more likely to invest in jurisdictions with robust ADR ecosystems (Saudi Arabia, Qatar and UAE have all developed efficient commercial mediation ecosystems and have officially ratified the Singapore Convention over the last 3 years), Pakistan must prioritize the building of an effective 'Investor-State Mediation' ecosystem whereby time & cost-effective mediation platforms are exhausted in international investment disputes before the investors are taken to arbitration or the courts. This perhaps needs to be adopted by the Special Investment Facilitation Council (SIFC) as a foremost agenda for improving Pakistan's investment climate.



# Developments in the Arbitration Laws of Pakistan



**Syed Muaz Shah,**  
Legal Coordinator,  
The Islamic Chamber of  
Commerce, Industry  
and Agriculture

Joseph Grynbaum once said, "An ounce of mediation is worth a pound of arbitration and a ton of litigation!" Pakistan's new Arbitration Bill 2023 is a dynamic piece of legislation to overhaul the out-dated law

takes influence from Singapore, Malaysia and the United Kingdom legal developments around arbitration. The new law will reform not only international arbitration but domestic as well. Some key reforms for example are to eliminate the deadlock between an even number of arbitrators which was possible in the 1940 law but not possible in the new proposed bill. Arbitrators are now required to certify their impartiality before being selected as arbitrators for a matter. Additionally, aside from party-based selection of arbitrators as per agreement, the appointments will be by an external entity, most likely the High Courts in their respective jurisdictions.

of pre-partition Pakistan designed to reduce the burden on the courts. Interestingly this is a follow up on the legislative changes of 2011 where Pakistan passed the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral) Act, 2011. The international arbitration case before the World Bank's International Center for Settlement of Investment Disputes (ICSID) of Reko Diq between Pakistan and foreign companies to developing a major mine, highlights the meaningful impact particularly in respect to foreign direct investments (FDIs) and the security of such investments. Such progressive development hopefully will bring Pakistan's legal commitment to arbitration and it's procedure to a more certain degree in the backdrop of political instability.

Article 16(1) of the Model Law and article 23(1) of the Arbitration Rules of UNCITRAL both dictate that "[t]he arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement." This doctrine of kompetenz-kompetenz, a German development, now internationally recognized as an important element in international arbitration is also part of the new proposed law. The grant of interim relief including demand for security for costs has also been incorporated – this has proven successful practically in India and there is hope to replicate this in Pakistan.

The Arbitration Bill 2023 is being developed under the Arbitration Law Review Committee of the Law and Justice Commission of Pakistan. The draft law is based on the UNCITRAL Model Law on arbitration originally developed in 1985 and further amended in 2006. The bill also

Earlier developments in 2011 with the passage of the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral) Act, 2011 were to enforce the New York Convention of 1958, the key international agreement covering arbitration to whom Pakistan as a state has been a party since 1958 but only ratified in 2005. So, the new bill will





not focus on foreign arbitral awards as such but those agreements made within Pakistan's jurisdiction now also have a sense of security.

The ICSID case of Reko Diq demonstrated the commitment of Pakistan to adhere to international convention around the issue particularly since it was a test of the new law in 2011 at the time. The productive nature of that \$5.8 billion dollar penalty Pakistan from that case is that it matured into a constructive win-win situation between Barrick Gold and Pakistan in the end. Using the ruling, both sides came together to a new mutually agreed settlement to revive the project. This of course practically demonstrating, on a large state-level, that arbitration can also be followed up with mutual negotiations and mediation to arrive at an amicable end. Mark Bristow recently commented at the Future Minerals Forum in Riyadh this January that the narrative of a politically unstable Pakistan is not accurate when it comes to arbitration and following through with a settlement. From one government to its political opponents – the deal continued and was settled as it was agreed. This demonstrates meaningful confidence in Pakistan's ability to honor contracts and positive effect of arbitral awards.

Though Pakistan has yet to sign on to the Singapore Mediation Convention – it will be only a matter of time as Pakistan is clearly showing progress to developing the ADR landscape in the country. With the recent resignation of the puisne judge of the Supreme Court, Justice Mansoor Ali Shah is poised to take the helm of leadership of the Supreme

Court in late October 2024. He is a known advocate of the promotion of ADR both in arbitration and mediation as he also is the Chairperson of the Arbitration Law Review Committee developing the Arbitration Bill of 2023.

The Arbitration Bill of 2023 is expected to be passed this year in 2024. Yet there is still room for improvement in respect to developing the online arbitration landscape as done in India and other jurisdictions. Additionally, the expedited model of arbitration which revolves around completing an arbitration within a shorter time period, namely 90 days with a single arbitrator may be more appropriate for smaller scale disputes. Also, measures should be looked at to create fair gender participation which can be incorporated into law to ensure female participation in this landscape – between three arbitrators one can and should be a female.

Alas, further developments will be hoped for but there is no doubt that the ton of 4+ million litigation cases are to be reduced through arbitration and other ADR mechanisms such as mediation in the coming years. Look out for these developments particularly in mediation as it would not be a far guess that Pakistan will join the 56 nations already signed onto the Singapore Mediation Convention of 2019. Hopefully other countries in SAARC will look to Pakistan with these changes to develop their own legal framework around the matter.



# An Overview of International Commercial Dispute Settlement through Arbitration



**Md. Helal Chowdhury,**  
Director General,  
SAARC Arbitration Council

## 1. Introduction to Arbitration:

International trade and commerce have led to a notable cross-border commercial relationship.

Some of these relationships are creating the need for a proper

means of resolving disputes that may arise. International arbitration is the most preferred means of resolving such kinds of disputes. International arbitration is mostly used to resolve disputes arising out of industries construction, insurance, shipping, and trade in commodities.

## 2. Nature of Arbitration: Constituent aspects:

In general, arbitration is conducted by either one arbitrator or three arbitrators commonly referred to as the arbitration tribunal. The tribunal is usually chosen by the parties in the dispute and the tribunal is almost like a judge in court. The right of choice allows the parties to have some sort of control over the arbitration tribunal.

The arbitration process is consensual, which means disputing parties submit to the arbitration tribunal voluntarily. The arbitrators only have jurisdiction when all the parties to the dispute have agreed to submit the dispute to the arbitration process. Parties in a contract

will agree to submit themselves to arbitration in the event of a dispute by way of an arbitration agreement. The arbitration agreement could take the form of an arbitration clause in the main contract or as a standalone or separate agreement.

## 3. Faster Option to Resolve a Commercial Dispute:

Whilst there are several advantages of international arbitration over other forms of dispute resolution, particularly commercial litigation, parties must make informed decisions to arbitrate based on their objectives and interests.

## 4. Arbitration Agreement: A Consensual Process:

Arbitration is a consensual and voluntary process. Parties in a dispute must agree to submit to arbitration any dispute that arises from their contract. This agreement could be stated in the agreement in the form of an arbitration clause. Alternatively, parties can draw a separate and standalone agreement to arbitrate once a dispute arises.

The arbitration agreement is important because it sets out the main aspects of the arbitration process. These aspects include the place of arbitration, the number of arbitrators and the procedural rules that will govern the arbitration process. The arbitration agreement should be well drafted to avoid ambiguities, future misunderstandings between/among parties, illegality or invalidity in the settlement process.





## 5. Seat of Arbitration Determines Rules for Settlement:

The seat of arbitration is referred to as the legal place of arbitration. The seat of arbitration is different from the venue of the hearings or the place where other procedural steps take place. The seat of arbitration determines the law or legal framework under which the arbitration will be conducted. This is important because it determines how the local courts can be involved if it is required to enforce an arbitral award or for other necessities. Parties need to be careful in choosing the seat of arbitration because by doing so they are choosing the procedural laws that apply to the arbitration process. For example, if the parties choose London as the seat of the arbitration, they elect to be subject to the Arbitration Act, 1996 on procedural matters. It should be noted that the national laws do not substitute the procedural rules chosen by the parties but may fill gaps that are not addressed by the procedural rules.

## 6. Process of Administration:

The arbitration process can either be administered by an institution or an ad hoc system. Institutional arbitration incorporates the rules and procedures of the institution selected by the parties in their arbitration agreement. The rules set out by a particular institution provide a procedural framework that will guide the proceedings from the beginning to the end when the tribunal makes an award. The entire process is administered by the institution chosen by the parties.

Ad hoc arbitration on the other hand is conducted without the involvement of an arbitration institution and parties here are free to craft the arbitration rules themselves. Parties are however at liberty to adopt rules specifically crafted for ad hoc arbitration such

as the United Nations Commission on International Trade Law (UNCITRAL) Rules.

There are many arbitration institutions in the world which parties to use and some are highlighted below:

(a) The London Court of International Arbitration (LCIA):

The LCIA is one of the leading international institutions well known for commercial and international arbitration as is based in London. The London Court of International Arbitration administers arbitration proceedings under the LCIA Rules.

(b) The International Court of Arbitration of the International Chamber of Commerce (ICC):

The International Court of Arbitration is an institution for the resolution of international commercial disputes. It operates under the auspices of the International Chamber of Commerce.

(c) The International Centre for Dispute Resolution (ICDR):

The ICDR is the international division of the American Arbitration Association which was established in 1926 and is the leading arbitration institution in the US. The ICDR administers international arbitration under its International Arbitration Rules.

(d) The International Centre for the Settlement of Investment Disputes (ICSID):

The ICSID was established in 1966 and is based in Washington, DC. The ICSID was established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The ICSID is part of the World Bank and was established to specifically deal with the resolution of international investment disputes. The ICSID administers arbitration



proceedings under its ICSID Convention Arbitration Rules.

(e)The World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre:

The WIPO Arbitration and Mediation Center is based in Geneva, Switzerland. It was established in 1994 to offer dispute resolution in international commercial disputes in the technology, entertainment, and intellectual property sectors. It administers arbitration proceedings under its WIPO Arbitration, Expedited Arbitration, Mediation and Expert Determination Rules (the WIPO Rules).

(f) the SAARC Arbitration Council (SARCO):

It is an inter-governmental body mandated to provide a legal framework/forum within the region for fair and efficient settlement of commercial, industrial, trade, banking, investment and such other disputes, as may be referred to it by the member states and their people.

SARCO offers a fair mechanism through which to settle inter-trade disputes amicably. Aiming to serve as a viable alternative to the International Court of Arbitration, it will be sensitive and adherent to cultural differences amongst the member states and guarantees thorough inquiry in the pursuit of legal solutions to conflicts.

## 7. Procedural Steps in International Arbitration:

Procedures used in international arbitration vary depending on the rules chosen by the parties. Typically, an international arbitration will follow the following steps:

- (a)Request for arbitration by the Claimant or aggrieved party. This will usually include a summary of the claim.
- (b)Response by the respondent which may include a counterclaim if any.
- (c)Reply to counterclaim (if any) by the claimant.
- (d)Appointment of the tribunal.

(e)A procedural hearing setting out the steps to be followed and the timetable for the arbitration.

(f)Filing of the claimant's full statement of the case.

(g)Filing of the full statement of defence and counterclaim (if any) by the respondent.

(h)Filing of the claimant's reply and defence to the counterclaim (if any).

(i)Disclosure of documents to be relied upon by the parties.

(j)Exchange of witness statements.

(k)Exchange of expert reports (if any).

(l)Meeting of parties (or their representative) to narrow down and agree on issues to be determined by the tribunal.

(m)Exchange of pre-hearing submissions.

(n)Oral hearings then take place.

(o)Exchange of post-hearing submissions.

(p)Delivery of the award by the tribunal.

Some of these steps can be done away with if the parties agree. For example, parties may agree to do away with oral hearings and request the tribunal to make an award based on the documents filed and exchanged among the parties.

## 8. Enforcement of Awards:

An award in arbitration is the final decision made by the arbitration tribunal after considering all the facts and the law. An award is equivalent to a judgment issued by the court in litigation. The award by a tribunal is usually on a substantive issue and not on procedural issues.

Awards by the tribunal can be interim, partial, or final. An interim award is issued temporarily and does not finally decide on an issue. In most cases, it is used to maintain the status quo or preserve assets or property before a final decision is made. A partial award is a decision on one or more issues but not all issues that the tribunal has to decide on. A final award is one that conclusively decides on all issues and brings the arbitration process to an end.

An award can also be arrived at by consent of the



parties. This is known as a consent award where parties in the dispute agree to settle their dispute. This consent award may be enforced like another award if it is not complied with by either party.

Enforcement of awards is easy as parties tend to comply with the award voluntarily in most cases. However, there are incidents where a party fails to comply with an arbitral award. In such cases, the other party may apply to a court of law for the recognition of the award. When a party applies to a court of law for recognition of the award, it does so to seek the court's confirmation that the award is valid and binding. The court's enforcement processes will then be used to enforce that award. Enforcement processes vary depending on the nature of the dispute and they include seizure of assets or orders to pay the other party.

#### **9. Awards can be challenged:**

Awards can be challenged. But the scope is very limited and it is possible in exceptional circumstances. The reason is that awards are final and binding. An award can be challenged in cases of irregularities in the appointment of the tribunal. An irregularity in the arbitration proceedings that causes an injustice to one of the parties can also be a ground for challenging and setting aside an award.

#### **10. Conclusion:**

International arbitration is probably the best method of solving international commercial disputes as opposed to commercial litigation. Other forms of dispute resolution such as mediation may also be used to find solutions but may not be perfect for commercial disputes because the decisions that emanate from such processes are not final and binding.

In considering international arbitration, parties are recommended to take into consideration the various aspects of the process like costs, seat of arbitration and choice of rules to be used as these considerations may determine the success of the process.





## SARCO's Events and Achievements for the Year 2023

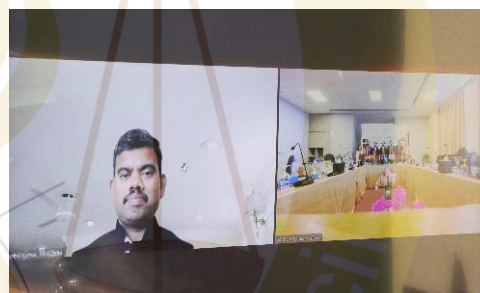
### 12th Governing Board Meeting of the SAARC Arbitration Council (SARCO)

The Twelfth (12th) Meeting of the Governing Board of SARCO was held in Thimphu, Bhutan, via hybrid mode, on 04-05 December 2023. The Meeting was chaired by the newly elected Chairperson, Dr. SK Golam Mahbub, from Bangladesh.



The Meeting was held after a period of three (03) years due to the onset of the COVID-19 Pandemic in 2020. A number of important administrative, financial and other substantive matters pertaining to SARCO were presented by Md. Helal Chowdhury, Director General, SARCO, along with Barrister Saquib Mangrio, Assistant Director (Law), SARCO, for deliberation by the Governing Board Members.

The Meeting concluded with the unanimous adoption of the 12th Governing Board Meeting Report, followed by a vote of thanks from the Governing Board Members from the Kingdom of Bhutan and Republic of India.



### SARCO's Celebration of the 39th SAARC Charter Day

SARCO organized the 39th SAARC Charter Day on 13th December 2023 at the SARCO Secretariat in Islamabad, Pakistan.

The event was attended by guests from different governmental organisations and sectors, including Director (SAARC) from the Ministry of Foreign Affairs of the Islamic



Republic of Pakistan, Member of the

Governing Board of SARCO from the Islamic Republic of Pakistan, Director, SAARC Chambers of Commerce and Industry, Director, SAARC Energy Centre, Director General, Legal Aid & Justice Authority, as well as members of the legal and ADR fraternity, and supportive colleagues from Habib Bank Limited, Islamabad.



## SARCO's Events and Achievements for the Year 2023

### SARCO's Seminar in Karachi, Pakistan



SARCO, as part of its approved program of activities for the year 2023, and in collaboration with Musaliha International Center for Arbitration and Dispute Resolution (MICADR), organized a one-day seminar on the theme of "Amendment in the Arbitration Act: Are Changes Long Overdue?", on 24th July 2023, at the Movenpick Hotel, Karachi, Pakistan.

The one-day event delved into the significance of Alternative Dispute Resolution (ADR) mechanisms, such as arbitration, and focused on the gaps and challenges in current Arbitration Act 1940 and the proposed amendments to cater to lacunas present.

The event was attended by over hundred individuals, including members of the legal fraternity, business community, law students and members of various ADR organizations.



The Key Note address was delivered by the Chief Guest, Justice Irfan Saadat Khan, Hon'ble Senior Puisne Judge of the High Court of Sindh, whereas the Speakers, comprising key members of the judiciary and prominent lawyers working in the field of ADR, provided their valuable insights and perspectives during the relevant

panel discussions. Regarding the role and future of SARCO, a brief speech was also delivered by Mr. Khurram Shahzad Mughal, Governing Board Member of Pakistan for SARCO.







## SARCO's Events and Achievements for the Year 2023

### SARCO's Seminar in Colombo, Sri Lanka

SARCO, as part of its approved program of activities for the year 2023, and in collaboration with Federation of Chambers of Commerce and Industry of Sri Lanka (FCCISL) and Sri Lanka National Arbitration Centre (SLNAC), organised a one-day seminar on the theme of "Arbitration in Sri Lanka: Becoming an Arbitration Hub", on 25th August 2023, at the Galle Face Hotel, Colombo, Sri Lanka.



The event was attended by over one hundred individuals, including the hon'ble Foreign Minister of Sri Lanka; the Attorney General of Sri Lanka; President of the Bar Association of Sri Lanka; President of the Federation of Chambers of Commerce and Industry of Sri Lanka; the High Commissioner of the People's Republic of Bangladesh in Sri Lanka, as well as representatives from the High Commission of India and the High Commission of Maldives;

Chairperson of the Governing Board of SARCO; and members of the legal fraternity, business community, law students and representatives from various ADR organizations.



## SARCO's Webinars and Virtual Workshops

### Bangladesh:

SARCO organized a webinar on the theme of “Arbitration in Bangladesh: Navigating the Legal Landscape and Key Institutional Developments” on 20 June 2023, virtually from the SARCO Secretariat based in Islamabad, Pakistan.

The event was chaired by Mr. Md. Helal Chowdhury, Director General, SARCO, and was moderated by Barrister Saquib Mangrio, Assistant Director (Law), SARCO.



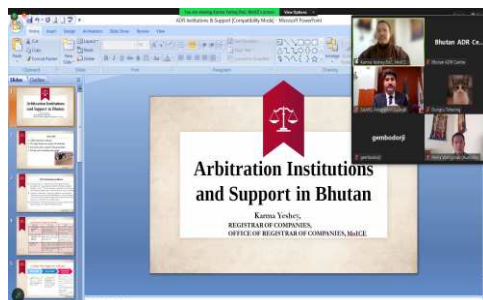
The event was graced by the Chief Guest, Mr. Md. Golam Sarwar, Secretary, Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh. Also in attendance were various dignitaries and officials including, Mr. Md. Jashim Uddin, former President, the Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) and current President, SAARC Chambers of Commerce and Industry; Ambassador Mosud Mannan, acting Secretary General, FBCCI; the Director (ETS), SAARC Secretariat; Governing Board Member of Pakistan for SARCO; and other members of the legal fraternity, business community, and government organisations.



### Bhutan:

SARCO organised a one-day virtual workshop on the theme of “Arbitration in Bhutan: New Beginnings”, on 21st November 2023, virtually at the SARCO Secretariat in Islamabad, Pakistan.

The workshop provided participants with a comprehensive understanding of the arbitration landscape in Bhutan, encompassing its legal framework, institutional support, and recent developments.



The event was attended by participants hailing from different sectors and backgrounds, including the Chief Administrator, Bhutan Alternative Dispute Resolution Centre (BADRC); Member of Governing Board of SARCO from the Kingdom of Bhutan; as well as members of the legal fraternity, academia and representatives from relevant ADR organizations.





# SARCO's Webinars and Virtual Workshops

## India:

SARCO organised a one-day webinar on the theme of “Dynamic Shifts in the Law and Practice of Arbitration in India: The Past Five Years”, on 19th December 2023, virtually at the SARCO Secretariat in Islamabad, Pakistan.

The one-day event brought together participants from various backgrounds and provided them with a comprehensive analysis of the dynamic shifts that have occurred in the law and practice of arbitration in India over the past five years.

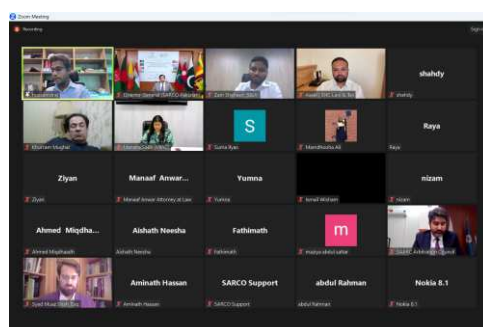


The event was attended by various participants, including the Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs of Nepal; Director (L&T), Ministry of External Affairs of the Republic of India; representatives from the Attorney General's Office of the Republic of Maldives; Registrar, Indian Council of Arbitration; as well as members of the legal fraternity, academia and representatives from relevant ADR organizations.

## Maldives:

SARCO organised a one-day virtual workshop on the theme of “Safeguarding Maldivian Interests through Arbitration: Reflection and Preparation”, on 9th November 2023, virtually at the SARCO Secretariat in Islamabad, Pakistan.

The one-day event provided a comprehensive platform for legal professionals, government representatives, business stakeholders, and academics to collectively explore and strategize on effective mechanisms to safeguard Maldivian interests in the realm of Alternative Dispute Resolution (ADR) mechanisms, specifically arbitration.



The event was attended by various high-profile individuals, including the hon'ble Chairperson, Maldives International Arbitration Centre (MIAC); Vice Chairperson, MIAC; President of the Bar Council of Maldives; Member of Governing Board of SARCO from the Islamic Republic of Pakistan; as well as members of the legal fraternity, and representatives from relevant ADR organizations.



## Editor's Note

Dear Esteemed Readers,



As we conclude the 10th edition of SARCO's Newsletter for the year 2023, it brings me immense pleasure to reflect on the remarkable journey we have undertaken together over the past year. This newsletter, a testament to our collective commitment to furthering legal cooperation and dispute resolution in the SAARC region, encapsulates the diverse and dynamic initiatives undertaken by SARCO.

Throughout these pages, you'll catch a glimpse of SARCO's activities and achievements, accompanied by captivating articles and valuable insights into the world of Alternative Dispute Resolution (ADR). SARCO's vision of promoting ADR mechanisms remains steadfast, and this edition not only celebrates our achievements but also serves as evidence of SARCO's resurgence and resilience.

I extend my heartfelt gratitude to all our contributors, whose valuable perspectives enrich the content within. Their commitment to sharing knowledge is pivotal in creating a vibrant discourse within the SARCO community.

Looking ahead, SARCO is poised for even greater development and progress in the year 2024. We aspire to engage with academia, legal professionals, and members of the business community, seeking their valuable insights and collaboration. Together, we aim to fortify SARCO's role as a dynamic force, driving positive change and innovation in the realm of dispute resolution.

In closing, I express my sincere appreciation to the SARCO team, whose unwavering commitment and hard work have brought this edition to fruition. I look forward to the continued collaboration and success that lie ahead for SARCO and its partners.

Thank you for being a part of our journey.

Warm regards,

Barrister Saquib Mangrio  
Assistant Director (Law)  
SAARC Arbitration Council (SARCO)



Plot No. 3-D, Street No. 67, Sector F-10/3,  
Islamabad, Pakistan.  
Telephone: 051-9266357-8, Email: [info@sarco-sec.org](mailto:info@sarco-sec.org)  
[www.sarco-sec.org](http://www.sarco-sec.org) [sarco\\_sec\\_](https://twitter.com/sarco_sec_)