

# [TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

Bill

*to provide for the establishment of a comprehensive regime in Pakistan for the swift and effective resolution of disputes relating to the export and import of goods and services including import and export through e-commerce*

**WHEREAS**, it is essential, for the promotion of trade in Pakistan, protection of all trading interests and improvement of Pakistan's standing internationally, that there shall be established an effective dispute resolution regime for the swift, efficient and effective resolution of international trade disputes through negotiations, determinations, alternative dispute resolution mechanisms and referral of disputes to commercial benches;

**WHEREAS**, it is necessary that such dispute resolution regime should be comprehensive and flexible encompassing a full range of dispute resolution methods, cooperation and assistance from the relevant government bodies as well as consistent with internationally accepted standards; and that such a regime should be equipped with an exclusive supervisory and enforcement jurisdiction and a streamlined procedure to carry out the purposes of this Act;

**AND WHEREAS**, it is necessary to constitute a trade dispute resolution commission to perform and execute the functions outlined in this Act with the possibility of performing the same functions with regard to domestic trade disputes in the future, as may be prescribed at a later time.

It is hereby enacted as follows:-

## PART I

### *Introduction and Scope*

**1. Short title, extent and commencement-** (1) This Act shall be called the Trade Dispute Resolution Act, 2022.

- (2) It shall extend to the whole of Pakistan.
- (3) This Act shall come into force at once.

2. **Definitions.** - In this Act, unless there is anything repugnant in the subject or context, —

- (1) **“arbitration”** means any arbitration pursuant to section 48;
- (2) **“arbitration agreement”** means an agreement made by parties to submit to arbitration pursuant to section 48 in all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship whether contractual or not;
- (3) **“arbitrator”** means a sole arbitrator or a panel of arbitrators;
- (4) **“black-listed party”** means a party which does not comply with the findings of TDRC given in its Final Determination and being declared black-listed by the Commission through an order;
- (5) **“commercial bench”** means a commercial bench of the High Court as constituted pursuant to section 51 or otherwise in existence;
- (6) **“Commission”** or **“TDRC”** means the Trade Dispute Resolution Commission constituted under this Act;
- (7) **“complaint”** means an application filed by a party with the Commission for the resolution of a trade dispute;
- (8) **“conciliation”** means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute;
- (9) **“conciliator”** means a sole conciliator or two or more conciliators as the case may be;
- (10) **“costs of arbitration”** means the cost of arbitration including, but not limited to, the fees and expenses of the arbitrator, the legal and other expenses of parties and any other expenses related to the arbitration;
- (11) **“Chairman”** means the Chairman of the Commission;
- (12) **“dispute”** includes any trade dispute as defined under section 3(2) of the Act;

- (13) **"division concerned"** means the division to which business of this Act stands allocated;
- (14) **"e-commerce"** means electronic commerce and is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means;
- (15) **"export"** is as defined in the Imports and Exports (Control) Act, 1950 (Act No. XXXIX of 1950)
- (16) **"expert"** means a person appointed by the Commission under section 18(2) of the Act;
- (17) **"final determination"** has the meaning set out in section 35 of the Act;
- (18) **"freeze"** includes any attachment, sealing, prohibiting, holding, controlling or managing of any property either through a receiver or otherwise and in case it is deemed necessary the disposal thereof by sale or through auction;
- (19) **"goods"** includes without limitation any tradable item, raw material, product or byproduct which is sold for consideration and has an actual or potential customs classification;
- (20) **"guidelines"** mean the Guidelines as may be prescribed by the Commission from time to time;
- (21) **"ICC"** means the International Chamber of Commerce;
- (22) **"interim determination"** means the interim determination issued under section 36;
- (23) **"import"** shall have the same meaning as assigned thereto in the Imports and Exports (Control) Act, 1950 (Act No. XXXIX of 1950)
- (24) **"judge"** unless otherwise provided, means a judicial member of a commercial bench;
- (25) **"judgment"** means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court, and including interim measures of protection;

- (26) **“list of black-listed parties”** means a list of black-listed parties maintained by TDRC as provided in section 53;
- (27) **“member”** means a member of the Commission and includes the Chairman;
- (28) **“New York Convention”** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed at New York on 10 June 1958 as implemented into the law of Pakistan by the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (Act No. XVII of 2011), and any amendment, modification or re-enactment of the same;
- (29) **“party” or “parties”** includes any person directly related to a trade dispute;
- (30) **“person”** includes, in case of a company or body corporate, the sponsors, chairman, chief executive, managing director by whatever name called and guarantors of the company or body corporate and in the case of any firm, partnership or sole proprietorship the partners, proprietor or any person having any interest in the said firm, partnership or proprietorship concern or direction or control thereof;
- (31) **“prescribed”** means prescribed by rules or regulations made under this Act;
- (32) **“property”** means any or all movable and immovable properties situated within or outside Pakistan;
- (33) **“regional conciliation committee”** means a committee constituted under section 43;
- (34) **“regulations”** means the regulations made under this Act;
- (35) **“rules”** means the rules made under this Act;
- (36) **“secretary”** means the secretary appointed under section 27;
- (37) **“services”** means, without limitation, a service of whatever type or any description whether industrial, trade, professional or otherwise;
- (38) **“trade body”** means any entity registered for the purpose of managing trading matters or registered under the Trade Organizations Act, 2013 (II of 2013);

- (39) “**trade dispute**” has the meaning set out in sub-section 2 of section 3;
- (40) “**UNCITRAL**” means the United Nations Commission on International Trade Law;
- (41) “**UNCITRAL Conciliation Rules**” means the Conciliation Rules adopted by the General Assembly of the United Nations through Resolution 35/52 on the 4th December, 1980, as amended from time to time;
- (42) “**UNCTAD**” means the United Nations Conference on Trade and Development;
- (43) “**website**” means the website officially maintained by TDRC;
- (44) “**WIPO**” means the World Intellectual Property Organization; and
- (45) “**WTO**” means the World Trade Organization.

**3. Scope of application.** – (1) The powers conferred by this Act may be exercised in relation to any trade dispute as defined in sub-section (2).

(2) For the purposes of this Act, a trade dispute means any dispute or complaint concerning, relating to or arising out of the export and import of goods and services, including disputes arising with the carrier of the goods, export and import through e-commerce, conducted wholly or partially in or otherwise connected with the territory of Pakistan.

(3) Any of the provisions in this Act may also be applied by agreement of all parties to any existing or future trade dispute without any restriction as to territory.

(4) The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

**4. Non-intervention.** - Notwithstanding anything contained in any other law for the time being in force in matters governed by this Act, no court or tribunal may intervene except in the manner as provided by this Act.