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PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 30th April, 2011

No. F. 9 (34)/2010-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 28th April, 2011, is hereby published for general information:—

ACT NO. IX OF 2011

An Act to implement the International Convention on the Settlement of Investment Disputes between States and Nationals of other States

WHEREAS Pakistan has signed and ratified the International Convention on the Settlement of Investment Disputes between States and Nationals of other States;

AND WHEREAS it is expedient to enact the law for that purpose.

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1) This Act may be called the Arbitration (International Investment Disputes) Act, 2011.

(63)

Price : Rs. 20.50

[360 (2011)/Ex. Gaz.]

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

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

- (a) **“award”** includes any decision interpreting, reversing or annulling an award, being a decision pursuant to the Convention, and any decision, as to costs, which under the Convention is to form part of the award;
- (b) **“Centre”** means the International Centre for Settlement of Investment Disputes established by the Convention;
- (c) **“Convention”** means the Convention on the Settlement of Investment Disputes between States and Nationals of other States incorporated in the Schedule;
- (d) **“Government”** means the Federal Government; and
- (e) **“Schedule”** means the Schedule to this Act.

3. **Registration of awards.**—(1) An award shall be deemed to have been rendered pursuant to the Convention on the date on which certified copies of the award were dispatched to the parties.

(2) Any person seeking recognition or enforcement of an award rendered pursuant to the Convention shall be entitled to have the award registered in the High Court subject to proof of any matters that may be prescribed and to the other provisions of this Act.

(3) In addition to the pecuniary obligations imposed by the award, the award shall be registered for the reasonable costs of and incidental to registration.

(4) If at the date of the application for registration the pecuniary obligations imposed by the award have been partly satisfied, the award shall be registered only in respect of the balance, and accordingly if those obligations have been wholly satisfied, the award shall not be registered.

4. **Effect of registration.**—Subject to the provisions of this Act, an award registered under section 3 shall, as respects the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution as if it had been a judgment of the High Court given when the award was rendered pursuant to

the Convention and entered on the date of registration under this Act, and, so far as it relates to such pecuniary obligations:—

- (a) proceedings may be taken on the award;
- (b) the sum for which the award is registered shall carry interest if the award so stipulates; and
- (c) the High Court shall have the same control over the execution of the award, as if the award had been a judgment of the High Court.

5. **Binding on the Government.**—Sections 3 and 4 shall bind the Government but not so as to make an award enforceable against the Government in a manner in which a judgment would not be enforceable against the Government:

Provided that sections 3 and 4 shall not be binding on the Government in the case of awards to which it is not a party.

6. **Government contribution to expenses under the Convention.**—Any sums required to meet any obligations of the Government arising out of Article 17 of the Convention (which obliges the Contracting States to meet any deficit of the Centre) shall be charged on Government and paid through the Budget.

7. **Exclusion of Arbitration Act.**—The provisions of the Arbitration Act, 1940 (X of 1940), shall not apply to proceedings pursuant to the Convention.

8. **Certain provisions of Convention to have force of law.**—(1) Notwithstanding anything to the contrary in any law, the provisions of Articles 18, 19, 20, 21(a) and 22 of Convention as it applies to Articles 21 (a), 23(1) and 24 shall have the force of law.

- (2) Nothing in Article 24(1) of the Convention shall be construed as—
 - (a) entitling the Centre to import into Pakistan goods free of any customs duty without restriction on their subsequent sale therein;
 - (b) conferring on the Centre any exemption from taxes or duties which form part of the price of goods sold; or
 - (c) conferring on the Centre any exemption from taxes or duties rendered.

(3) For the purposes of Articles 20 and Article 21(a) of the Convention as given the force of law by this section, a statement to the effect that the Centre has waived an immunity in the circumstances specified in the statement, being a statement certified by the Secretary-General of the Centre, or by the person acting as Secretary-General, shall be conclusive evidence of such waiver.

9. **Power to make rules.**—The Federal Government may make rules.—

- (a) to prescribe the procedure for applying for registration of an award under this Act, and to require the applicant to give prior notice of his intention to register to other parties;
- (b) to prescribe matters to be proved on the application and the manner of proof, and in particular to require the applicant to furnish a copy of the award certified pursuant to the Convention;
- (c) to provide for the service of notice of registration of the award by the applicant on other parties;
- (d) to provide for the stay of execution whether provisionally or otherwise of any award registered under this Act in accordance with the provisions of the Convention; and
- (e) on any other matter which may be necessary to carry out the purposes of this Act.

10. **Federal Government to amend Schedule.**—The Federal Government may, by notification in the official Gazette, amend the Schedule in conformity with any amendments to the provisions of the Convention set out therein which may hereafter be duly made and adopted.

SCHEDULE

[See sections 2(c) and 2(e)]

CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

PREAMBLE

The Contracting States

CONSIDERING the need for international cooperation for economic development, and the role of private international investment therein;

BEARING IN MIND the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

RECOGNIZING that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

ATTACHING PARTICULAR IMPORTANCE to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

DESIRING to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

RECOGNIZING that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

DECLARING that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

HAVE AGREED as follows:

CHAPTER I

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

SECTION 1: ESTABLISHMENT AND ORGANIZATION

ARTICLE I

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

ARTICLE 2

The seat of the Centre shall be at the principal office for the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

ARTICLE 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

SECTION 2.—THE ADMINISTRATIVE COUNCIL

ARTICLE 4

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be *ex-officio* its representative and its alternate respectively.

ARTICLE 5

The President of the Bank shall be *ex-officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

ARTICLE 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:—

- (a) adopt the administrative and financial regulations of the Centre;
- (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
- (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

- (d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;
- (e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;
- (f) adopt the annual budget of revenues and expenditures of the Centre;
- (g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of the Convention.

ARTICLE 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

(2) Each member of the Administrative Council shall have one vote and except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

ARTICLE 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

SECTION 3.—THE SECRETARIAT

ARTICLE 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

ARTICLE 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

ARTICLE 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

SECTION 4.—THE PANELS

ARTICLE 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

ARTICLE 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

ARTICLE 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgement. Competence in the field of law shall be of particular importance in the case of persons on the Panel or Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

ARTICLE 15

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

(3) Panel members shall continue in office until their successors have been designated.

ARTICLE 16

(1) A person may serve on both Panels.

(2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State or which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

SECTION 5.—FINANCING THE CENTRE

ARTICLE 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

SECTION 6.—STATUS, IMMUNITIES AND PRIVILEGES

ARTICLE 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to institute legal proceedings.

ARTICLE 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

ARTICLE 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

ARTICLE 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat:

- (a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

- (b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

ARTICLE 22

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

ARTICLE 23

- (1) The archives of the Centre shall be inviolable, wherever they may be.
- (2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favorable than that accorded to other international organizations.

ARTICLE 24

- (1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.
- (2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.
- (3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II

JURISDICTION OF THE CENTRE

ARTICLE 25

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent sub-division or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) "National of another Contracting State" means:

- (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and
- (b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

(3) Consent by a constituent sub-division or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such

notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

ARTICLE 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

ARTICLE 27

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III

CONCILIATION

SECTION 1.—REQUEST FOR CONCILIATION

ARTICLE 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on

the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2.—CONSTITUTION OF THE CONCILIATION COMMISSION

ARTICLE 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

(2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

ARTICLE 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

ARTICLE 31

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3.—CONCILIATION PROCEEDINGS

ARTICLE 32

(1) The Commission shall be the judge of its own competence.

(2) Any objection by a party to the dispute that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of

the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

ARTICLE 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

ARTICLE 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavor to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

ARTICLE 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV

ARBITRATION

SECTION 1.—REQUEST FOR ARBITRATION

ARTICLE 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) the request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2.—CONSTITUTION OF THE TRIBUNAL

ARTICLE 37

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2) (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

ARTICLE 38

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties

