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Demurrage Under Pakistani Law: Legislative Framework, Challenges, and Strategies to Protect Client Interests in Pakistan

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Abstract

The word Demurrage itself explains the cost imposed on the consignee or owner of goods for delays beyond the free days which is called lay time in legal terms but due to late clearance and many more related issues shipper and consignee both suffer. Although, the courts of Pakistan grant a stay to the consignee for non-payment of demurrage under section 14-A custom Act yet ignore the fact that the doctrine of privity also operates in contracts, as both the shipper and owner of the goods sign the terms and conditions regarding the payment of demurrage, as in every contract lay time is always provided to the owner of the cargo. However, every cargo owner is not always entitled to a stay on nonpayment. Here the barrier or issue of less trade arises. This article explores the legal framework for Demurrage and the issues involved in its application in Pakistan.

Key Words: Demurrage, Maritime Law, International Trade, Legislative Framework, Cargo, Ports, Contracts, Compensation

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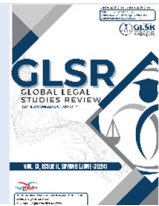
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Demurrage Under Pakistani Law: Legislative Framework, Challenges, and Strategies to Protect Client Interests in Pakistan

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Abstract

The word Demurrage itself explains the cost imposed on the consignee or owner of goods for delays beyond the free days which is called lay time in legal terms but due to late clearance and many more related issues shipper and consignee both suffer. Although, the courts of Pakistan grant a stay to the consignee for non-payment of demurrage under section 14-A custom Act yet ignore the fact that the doctrine of privity also operates in contracts, as both the shipper and owner of the goods sign the terms and conditions regarding the payment of demurrage, as in every contract lay time is always provided to the owner of the cargo. However, every cargo owner is not always entitled to a stay on nonpayment. Here the barrier or issue of less trade arises. This article explores the legal framework for Demurrage and the issues involved in its application in Pakistan.

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Keywords: [Demurrage](#), [Maritime Law](#), [International Trade](#), [Legislative Framework](#), [Cargo](#), [Ports](#), [Contracts](#), [Compensation](#)

Introduction

There are many gaps and a lack of development in shipping law in Pakistan. Pakistan is a hub of natural resources as a gift bestowed by Allah Almighty. In order to tap the maritime resources Pakistan can develop a robust legal framework by enactment and laws into one codified form as other countries have done such as Singapore, the Netherlands, and many others for maritime trade

but unfortunately this legal domain has been neglected in Pakistan.

The changing maritime circumstances urge the change and reforms in its legal setup as well. Demurrage term is used in shipping law to explain the monetary benefit to shipping lines on goods that stay for longer than the scheduled time at a terminal. The maritime law of Pakistan is inconvenient and bulky as it is scattered into numerous statutes regarding the procedures and



formalities of the entrance, staying, and departure of ships from port or terminal as well as clearance, regulations, and inspections. This causes barriers and delays in unloading the cargo and incurs an extra ordinary burden on both the shipping line and the owner of the goods which relatively hinders the smooth handling of cargo. This delay creates cost which is called demurrage and differs on the vendor, warehouse, port terminals, and stations as enforced by the port officials. No amount of laytime is a policy that has to be followed by each institution. Lapse of lay time or free time which is usually three to seven days is also mentioned in the contract signed by both parties and facilitated by each port.

The Karachi Port

The Karachi port was established by the East India Company in 1857. The port was initially administered by the Karachi Harbor Board until 1886 when an Act was passed to establish Karachi Port Trust which was made effective in 1887. The Trust is administered by a board of trustees comprising a chairman and ten trustees. The chairman is appointed by the federal government thus KPT functions as a federal agency. The chairman functions as a chief executive officer. Whereas the ten trustees are divided between the public and private sectors. Thus, five trustees are nominated by the federal government while the remaining five are elected by various private organizations to represent them in the board of trustees.

The Qasim Port

Port Qasim Authority was established in 1973 under the Port Qasim Authority Act 1973. Port Qasim also has the same issue in the supply of LNG as a limited number of bays and small channels cause delays and in response, demurrage costs are imposed. To resolve this issue there is a need to enhance the space and deepen the channels to minimize the financial loss to ship operators as well as to make a smooth passing of the traffic.

The Gwadar Port & China Overseas Port Holding Company

On the contrary, the port of Gwadar provides a tremendous way to connect the Asia trade into one-

way passage to mitigate the traffic at traditional ports. The Federation of Pakistan Chambers of Commerce (FPCCI) and China Overseas Port Holding Company (COPHC) are working to maximize the capacity as well as to facilitate its services to the maritime trade at a competitive price including Afghan transit cargo with the following details:

Free Zone Facility

Gwadar Port has developed an exclusive Free Zone Facility, the largest FREE ZONE area of more than 924 hectares available to accommodate Bonded Warehousing, Manufacturing, International Purchasing, Transit and Distribution, Transshipment, Commodity Display, and Supporting Services including Business Office, Customs, Financial, Information, Hotel, restaurant, entertainment, medical etc.

Gwadar Tax Exemptions Policy

The government of Pakistan has also introduced the Gwadar Tax Exemptions policy. A Tax Holiday for 20 years for all Federal, Provincial, and Local taxes, duties, and charges or levies are exempted which include: Corporate Income Tax, Income Tax on Interest Income on loans acquired, Sales Tax, Stamp Duties, Duties on ship bunker oils, Import duties on all imports for 40 years with the conditions applicable.

Free Zone Businesses include Container yards, Bonded Warehousing, Ambient/Temperature controlled/Refrigerated storage facilities, International Purchasing, Transit & Distribution, Packaging / Labeling, Stuffing & De-Stuffing, Transshipment, Light end-assembly & re-assembly, Imports & exports, Value added exports and Value addition to imports.

Gwadar Port Authority Ordinance 2002

The port is regulated by the Gwadar Port Authority established under the Gwadar Port Authority Ordinance passed and made effective in 2002. The authority has also been delegated power to make rules and regulations in service of the said ordinance. The ordinance also established a board comprising the chairman of the said authority and members.

Corporate Social Responsibility

As global corporate citizens, COPHC has contributed to the development of the infrastructure of the communities in which China's Overseas Port Holding Company operates. The corporate body respects humanity and works to raise the standards of living of the locals and lend them a helping hand whenever needed. The institution has provided support to various sectors of the country which includes, education, health, environment, and employment opportunities.

Legislative Framework for Demurrages Contractual Basis and Legal Principles

Demurrages in Pakistan are mainly regulated through contractual agreements such as bills of lading and contracts of charter parties in which terms and conditions are expressly mentioned regarding the application of demurrage fees. Such a contract specifically mentions the laytime-free period and the time when demurrage charges start to be applied. Rainey, S. (Ed.). (2019).

In Pakistan, the cases of demurrage are tackled through ordinary law of contract, which may be weighted by international agreements like the Hague-Visby Rules. The state of Pakistan does not have a single uniform code of marine. (United Nation, 1980).

However, all these applications do not specifically provide any clear provisions for demurrage cost but these treaties only offer guidance for liabilities and transportation of goods with caution limiting its sphere within the local law boundaries which is necessary to be applied when dealing with demurrage provisions. (Hague-Visby Rules.)

Challenges and Gaps

Regulatory and Enforcement Challenges

In the jurisdiction of Pakistan, a big flaw or gap in dealing with matters of demurrage is not having a single codified unit of maritime law that addresses all aspects of shipping cases including demurrages expressly. Hussain, S. (2020) Hence, this disparity makes it complex to appreciate the contracts and resolve the disputes. Khan, A. (2021).

When the courts handle the issue of enforcing the cost of demurrage provisions must interpret the

language in its true spirit by considering the local customs and practices and adopting various ways such as ADR techniques which may provide uniformity in the management of demurrage. Ministry of Ports and Shipping, Government of Pakistan. (2022).

Challenges of Non-Compliance by Shipping Companies in Pakistan

The Pakistan shipping sector faces serious implications due to the non-compliance which is crucial to international trade. There is an obvious deficit in operational efficiency as well as creates uncertainty and fear of danger among legal and financial parties involved.

The main element of non-compliance of terms and conditions of contracts is regarded as disobedience in the performance of the contract by the party that causes the element of breach of trust, and delays. This results in disagreements and difficulties in perusing claims as one part holds the cargo or ship of other parts and is not ready to resolve the disputes. This is one of the cases of the EMA shipping company as their cargo was held in China by the shipper as his dispute with Five Star shipping line due to a personal dispute which EMA company has nothing to do with.

However, in such cases, the last option is the legal battle which includes complex, lengthy, and traditional litigation and arbitration processes that take years to decide hence waste of time. In such a scenario, documentary evidence such as contracts and correspondence letters are empirical evidence but in Pakistan due to a lack of documentation most shipping lines are working on verbal communication. Due to non-compliance and time-consuming traditional ways of years back losses the confidence of investors in international maritime trade also causes hindrances to creating the atmosphere of transparency and accountability potency.

There is need to need to strengthen the maritime law and enforcement of its regulatory framework and scrutinize the system to remove such barriers through joint efforts of the shipping industry and officials of the Port and maintaining ethical standards. Also, engaging legal experts' advice and modern techniques of alternative

dispute resolution procedures are necessary to settle the matter and maintain integrity.

In conclusion remarks indeed the major issue of the Pakistani maritime sector is non-compliance but still, it is advice-able to make joint efforts to follow the law and making of documentation properly also strengthen the custom practices we can improve our maritime sector using these strategies for a long-term growth and may make as benchmark for others in resolving the disputes.

Case Decided in Courts

The appellate court in the case of Eternal Bliss set aside the judgment of the trial commercial court related to the fees of demurrage for cargo delay as the dispute arose due to the charterer's delays in not unloading the soybeans, which caused cargo damage and prompted owners to pay for around US\$1.1 million.

The main issue agitated in the appeal that whether the demurrage amount paid according to the terms of the charter party including all the expenses incurred due to delay in operation or specify one which is decided by the commercial court.

Key points of the court's decision included:

1. The customary understanding is that demurrage typically compensates for all resulting damages unless explicitly limited in the contract.
2. Recognition that demurrage is negotiated considering lost freight earnings due to delays caused by charterers.
3. Concerns over potential disputes if demurrage were interpreted narrowly, disrupting the contractual risk allocation.
4. Upholding the longstanding precedent set by *The Bonde* [1991], accepted in the shipping industry without significant objections.
5. This ruling clarifies the scope of demurrage and the availability of additional damages alongside it. Owners are advised to consider specifying in contracts that demurrage solely compensates for time lost, excluding other potential claims for losses, pending any further appeals to the Supreme Court (<https://kennedyslaw.com/en/thought->

leadership/article/court-of-appeal-gives-broad-meaning-to-demurrage-in-claim-for-liquidated-damages/).

6. The case involves an admiralty appeal in the High Court of Sindh, Karachi, between M/s Agility Logistics (Private) Limited (the Appellant) and M/s B. K. Shipping Co. Limited & Others (the Respondents) (<http://43.245.130.98:8056/caselaw/view-file/ODEwNzVjZm1zLWRjODM=>).

The dispute arises from an admiralty suit filed by the Respondents for recovery of freight, demurrage, and other charges related to a shipment of wheat from India to Afghanistan via Karachi.

Key Points: Respondent No.1, the owner of the vessel MV "Beacon SW," chartered by Respondent No.2, filed Admiralty Suit No. 10 of 2013 against the Appellant for unpaid charges related to a shipment of wheat.

Legal Proceedings: Respondent No.1 sought detention of cargo at Port Qasim under lien until payment or bank guarantee, which was allowed by a Single Judge's order. The appellant appealed this decision.

Arguments: The appellant argued that the goods shall be released now as all the freight charges paid by us as we are an authorized agent for consignees in Afghanistan under Afghan Transit Rules. The appellate court observed that respondent No.1 illegally withheld the bill of lading which is a requirement for the release of cargo as payment of freight was also done by the party. The Court ordered to release of the cargo to the appellant as their possessory right and gave credence to the mate's receipt as evidence.

Principle: In the matter where a bill of lading is missing, the court applied a realistic approach to business where the mate's receipt was also weighted as evidence of title and ignored the technical hindrance of freight payment and release of cargo.

Conclusion: The shot-up of the case is that the verdict of the lower court was set aside by the appellate court on the grounds of standards of commercial trade and fair settlement based on possession of cargo as a right determined by the mate's receipt over rigid documentation formalities

as it is settled principle of law that technicalities should be avoided to administered justice.

In this second case, the question of whether Section 14A of the Customs Act, 1969, as amended by the Finance Act, 2013, was constitutional was agitated in the Qasim International Container Terminal Pakistan Ltd. v. Federation of Pakistan case. Petitioner who is the owner of the port container in Karachi. He challenged this amendment as he is required to pay the customs staff and refund demurrages in certain stances.

He argued that the amendment was out of the purview of Article 73 of the Constitution as it is related to fiscal matters only. Therefore, it is not related to taxes and financial obligations so it should not be approved under the Finance Act.

The court rejected the plea raised by the petitioner by giving the reason that the preamble of the Customs Act facilitates the collection of duty and tax so the amendment and insertion of section 14-A are to promote the recovery of duty and taxes by custom officials as the objective of the fiscal act even though this amendment does not directly alter or imposing taxes but inserted as part of money bill under referred article of the constitution.

The court also interpreted the wording of the bare act of section 14-A (2) which stated that operators of the port, and the terminal have to give weight to the certificate of delay and detention issued by the customs officials and refund the amount of demurrages in such a situation. It made it clear that the phrase "entertains" in this context enforced a duty to comply with the issued certificates rather than giving terminal operators discretionary authority.

In the end, the court denied the petition, concluding that there was insufficient evidence to question Section 14A's validity. As a result, the petition was denied, and no expenses were paid. (<https://caselaw.shc.gov.pk/caselaw/view-file/MTQ5OTU5Y2Ztcy1kYzgZ>)

Technological Integration and Industry Practices

While digital platforms and automated tracking systems have prospects to improve demurrage management, infrastructural and regulatory

support may hinder their inclusion into Pakistani maritime operations. (Ahmed, F. (2020))

Given the effect of regional trade norms and economic situations, industry practices in Pakistan also have a major impact on demurrage management. (Zaidi, H. (2021)) Aligning these procedures with global norms can enhance demurrage operations' effectiveness and openness. Ministry of Law and Justice, Government of Pakistan. (2021)

Strategic Considerations and Recommendations

Enhancing Contractual Clarity and Legal Awareness

Maritime industry stakeholders in Pakistan should improve contract clarity and standardize terms with worldwide best practices to maximize demurrage management. (Hasan, A. (2022))

By inserting unambiguous, unequivocal terms and conditions in contracts regarding laytime calculations and rate of demurrages as well as procedures to resolve the dispute if arises.

Capacity Building and Technology Adoption

To minimize disputes and handle demurrage matters it is imperative to build the capacity between the shipping sector including shippers, agents, owners of goods, ship owners, and legal experts by insertion of modern technology techniques for the management of demurrages like the placement of blockchain technology to improve shipments efficiency and transparency and secure documentation. (Blockchain in Maritime Consortium. (2023)).

Conclusion

Reinvigorating Pakistan's Seaports: A Call to Take Prompt Action

The structure of Pakistani ports is potentially important for international maritime trade being centers of economic augmentation and international profits. Unfortunately, if we have insight into the current situation—a reflection of non-awareness and lack of knowledge, no useful policies, and old regulations—an emerging need of

today's trade requires prompt improvements and actions. Karachi Port Trust (KPT) familiar as "the gateway to Pakistan," is busy handling bulk amounts of shipments but still faces many obstacles including mass space limitations due to misappropriation by the land mafia and complex legal matters. As a consequence, the freight handling capacity is not up to the mark, which impacts efficiency and increases the cost.

Demurrage costs at ports like the Karachi Port Trust (KPT) escalate as a result of operational inefficiencies that are worsened by land grabs and litigation. These constraints limit the capacity of ports and hinder the timely handling of cargo, thus requiring urgent adjustments to improve efficiency and reduce cost burdens on importers and exporters.

In this regard, a comprehensive approach is necessary to address the issue of demurrage. The shipping industry of Pakistan needs to be modernized by harmonizing the international

treaties in order to fill the gaps and remove obstacles as well as improve the regulatory framework in the current system of the maritime industry. Such steps lead the sustainability in the economy of Pakistan as well as develop it as a master in maritime trade in the locality, creating growth-oriented doors.

Furthermore, Gwadar Port is a future mega port; it sees itself as an evident cruise ship destination from Europe not only this also strengthens tourism which is beyond its logistic objectives.

To sum up, the seaports of Pakistan are required to reinvigorate to achieve stability in economic growth. To place Pakistan as the leader in the maritime trade and logistics sector we need to overcome the gaps in our maritime law to survive in prevailing circumstances and harmonize with international standards so that foreign investors may trade through the Ports of Pakistan which provide a booster to the economy of Pakistan.

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