

# **Enforcement of Foreign Arbitral Awards in Pakistan**

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## **Overview**

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, governs the enforcement of foreign arbitral awards in Pakistan. This Act aligns with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, commonly known as the New York Convention. Pakistan, being a signatory to this Convention, has incorporated its principles into domestic law to facilitate international arbitration and the enforcement of arbitral awards.

## **Key Features of the Act:**

### **1. Application of the New York Convention:**

The Act implements the provisions of the New York Convention in Pakistan. The Convention facilitates the recognition and enforcement of foreign arbitral awards and arbitration agreements, promoting international arbitration as an effective means of resolving cross-border commercial disputes.

### **2. Recognition of Foreign Arbitral Awards:**

Under this Act, foreign arbitral awards are recognized and enforced in Pakistan as if they were domestic awards, provided that they meet certain conditions specified in the New York Convention.

### **3. Conditions for Enforcement:**

The Act outlines specific grounds on which the recognition and enforcement of a foreign arbitral award may be refused. These grounds include situations where:

- The arbitration agreement is not valid under the applicable law.
- The party against whom the award is invoked was not given proper notice or was otherwise unable to present their case.
- The award deals with a matter not contemplated by or not falling within the terms of the arbitration agreement.
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties.
- The award has not yet become binding or has been set aside or suspended by a competent authority in the country where the award was made.

#### **4. Arbitration Agreements:**

The Act recognizes arbitration agreements in writing between parties to submit disputes to arbitration. Such agreements must be enforced by the courts, ensuring that disputes covered by the agreement are referred to arbitration rather than litigated in the courts.

#### **5. Court's Role:**

Pakistani courts are given a supportive role in arbitration under this Act. They may intervene in arbitration matters only in specified circumstances, such as when the enforcement of an award is sought, or when a challenge to the validity of an arbitration agreement is raised.

#### **6. Limitation Period:**

The Act specifies the time limits within which applications for the recognition and enforcement of foreign arbitral awards must be made. This is in line with the general principles of the New York Convention and ensures timely enforcement.

#### **7. Public Policy Consideration:**

Recognition or enforcement of a foreign arbitral award may be refused if it is found to be contrary to the public policy of Pakistan. This exception is narrowly interpreted to promote the enforcement of foreign awards unless they clearly violate fundamental principles of justice or morality in Pakistan.

#### **Importance in International Trade:**

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, plays a crucial role in making Pakistan a more arbitration-friendly jurisdiction, encouraging foreign investment and trade by providing legal certainty and a reliable framework for the resolution of international disputes. It ensures that foreign investors can confidently engage in business in Pakistan, knowing that arbitration agreements and awards will be respected and enforced in accordance with international standards.

The courts in Pakistan have generally been supportive of the enforcement of foreign arbitral awards under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011. However, the judiciary's approach has been influenced by the need to balance international obligations with domestic legal principles, particularly regarding public policy considerations.

#### **Key Provisions of the Act**

##### **1. Application and Scope (Section 1)**

The Act applies to all of Pakistan and covers arbitration agreements made before, on, or after its commencement. It is applicable only to foreign arbitral awards made after July 14, 2005.

2. Definitions include terms such as "foreign arbitral award," which refers to awards made in states that are parties to the New York Convention or notified by the Pakistani government.

3. **Jurisdiction (Section 3)**

High Courts in Pakistan have exclusive jurisdiction to handle matters arising under this Act. The courts are to follow procedures similar to those in the Code of Civil Procedure, 1908.

4. **Enforcement of Arbitration Agreements (Section 4)**

If legal proceedings are initiated despite an existing arbitration agreement, the court must refer the parties to arbitration unless the agreement is deemed void or inoperative.

5. **Recognition and Enforcement of Foreign Arbitral Awards (Section 6)**

A foreign arbitral award, unless refused under Section 7, is recognized and enforceable as if it were a judgment of a Pakistani court. The award is binding and can be relied upon in legal proceedings within Pakistan.

6. **Grounds for Refusal of Enforcement (Section 7)**

Enforcement of a foreign arbitral award may be refused based on grounds outlined in Article V of the New York Convention, such as incapacity of parties, invalidity of the arbitration agreement, lack of proper notice to the party against whom the award is invoked, or if the award deals with a difference not contemplated by or falling within the terms of the submission to arbitration.

7. **Inconsistency and Precedence (Section 8)**

In case of any inconsistency between the Act and the New York Convention, the provisions of the Convention prevail.

## **Practical Implications for Enforcement**

To enforce a foreign arbitral award in Pakistan, the party seeking enforcement must furnish the necessary documents as per Article IV of the New York Convention. These include the authenticated original award or a certified copy, and the original arbitration agreement or a certified copy thereof.

The enforcement process respects the principle of minimal judicial intervention, aiming to uphold the validity and applicability of arbitration agreements and the finality of arbitral awards. This approach fosters a pro-arbitration environment conducive to international trade and investment.

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, is a significant piece of legislation in Pakistan that aligns the country with international standards for arbitration, particularly with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

### **Key Judicial Views and Trends:**

#### **1. Pro-Enforcement Bias:**

Pakistani courts, in line with the objectives of the New York Convention and the 2011 Act, have typically shown a pro-enforcement bias. This means that courts are inclined to enforce foreign arbitral awards unless there are compelling reasons not to, such as a violation of public policy or a clear procedural irregularity.

Courts have emphasized that the grounds for refusing enforcement are limited and should be narrowly interpreted to promote the finality and certainty of arbitration.

#### **2. Public Policy Exception:**

One of the main reasons courts may refuse to enforce a foreign arbitral award is if it is contrary to the public policy of Pakistan. However, the interpretation of "public policy" has been restrictive, focusing on fundamental legal principles, justice, and morality.

Courts have generally avoided using public policy as a blanket reason to refuse enforcement, recognizing that it should only apply in cases where the award fundamentally offends Pakistan's legal or moral framework.

#### **3. Limited Judicial Intervention:**

The Act restricts the role of courts in arbitration matters, limiting judicial intervention to specific circumstances. Courts have generally respected this limitation, intervening only when there are serious questions about the validity of the arbitration agreement or the award.

This limited intervention reflects an understanding that arbitration is intended to be an alternative to court litigation, and the judiciary should not undermine its effectiveness by excessive interference.

#### **4. Recognition of Arbitration Agreements:**

Courts have upheld the validity and enforceability of arbitration agreements, even when one party attempts to challenge the agreement to avoid arbitration. The judiciary has stressed the importance of respecting the parties' choice to resolve disputes through arbitration, in line with international arbitration principles.

When a valid arbitration agreement exists, Pakistani courts have generally stayed proceedings in domestic courts, directing the parties to arbitration as per their agreement.

## 5. Enforcement Process:

The courts have developed a consistent approach to the enforcement process, requiring the party seeking enforcement to provide the necessary documentation, such as the original arbitration agreement and the duly authenticated original award or a certified copy.

Challenges to enforcement are usually dealt with swiftly, as the courts recognize the importance of maintaining the efficiency and effectiveness of arbitration as a dispute resolution mechanism.

## 6. Challenges and Issues:

Despite the generally supportive stance, there have been instances where enforcement of foreign arbitral awards has faced delays due to procedural challenges or resistance from the losing party. These issues often stem from broader concerns about judicial efficiency and the capacity of the legal system to handle complex arbitration matters swiftly.

### Notable Cases:

**Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs, Government of Pakistan:** Although this case was decided in the UK, it highlighted issues related to the enforcement of arbitral awards involving Pakistani entities and brought attention to how Pakistani courts might approach similar issues. The case involved complex questions of jurisdiction and the validity of the arbitration agreement, with significant implications for enforcement in Pakistan.

**Hub Power Company Limited v. Pakistan WAPDA:** This case is an example of the Pakistani courts' approach to arbitration agreements and enforcement of arbitral awards in domestic and international contexts. The court emphasized the importance of upholding arbitration agreements and minimizing judicial interference in arbitration proceedings.

### Criticism

While the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, represents a significant step forward for Pakistan in aligning with international arbitration standards, it has faced criticism on several fronts. These criticisms highlight areas where the law and its implementation may fall short of the expectations of foreign investors, arbitration practitioners, and even domestic parties involved in international commercial disputes.

#### 1. Judicial Inconsistency and Delays:

**Inconsistent Application:** One of the primary criticisms is the inconsistency in the application of the law by Pakistani courts. While some judges have embraced the pro-enforcement bias mandated by the New York Convention, others have been more cautious or even resistant. This inconsistency can lead to unpredictability in the enforcement of foreign arbitral awards.

**Delays in Enforcement:** The enforcement process can be lengthy, with cases often being bogged down by procedural delays. This undermines the efficiency of arbitration as a quick and effective dispute resolution mechanism, potentially deterring foreign investors from choosing Pakistan as a seat for arbitration or doing business with Pakistani entities.

## **2. Public Policy Exception:**

**Broad Interpretation:** Although courts have generally taken a narrow view of the public policy exception, there have been instances where the exception has been interpreted broadly, leading to the refusal of enforcement of foreign arbitral awards. This broad interpretation can create uncertainty for foreign parties seeking to enforce awards in Pakistan, as it opens the door to subjective judicial interpretation.

**Lack of Clear Guidelines:** The Act does not provide clear guidelines on what constitutes a violation of public policy, leaving it to the discretion of the courts. This vagueness can lead to inconsistent rulings and reduce confidence in the enforcement process.

## **3. Limited Judicial Expertise in Arbitration:**

**Need for Specialized Courts:** Critics argue that the general judiciary may lack the specialized knowledge and expertise required to handle complex arbitration matters, particularly those involving international commercial disputes. The lack of specialized arbitration courts or trained judges can result in decisions that do not fully align with international arbitration principles.

**Training and Awareness:** There is a perceived need for greater training and awareness among judges about the nuances of international arbitration and the importance of aligning with global standards. Without this, Pakistan may struggle to become a truly arbitration-friendly jurisdiction.

## **4. Procedural Issues:**

**Bureaucratic Hurdles:** The enforcement of foreign arbitral awards can be hindered by bureaucratic hurdles, including the requirement for extensive documentation and the need to navigate complex legal procedures. These hurdles can deter parties from seeking enforcement in Pakistan, especially when compared to more streamlined processes in other jurisdictions.

**Over-reliance on Formalities:** The Act requires strict adherence to formalities, such as the provision of original or certified copies of the arbitration agreement and award. While these requirements are standard, the stringent application of such rules without flexibility can lead to unnecessary complications in enforcement proceedings.

## **5. Impact on Foreign Investment:**

**Investor Confidence:** The criticisms surrounding the Act's implementation, particularly the delays and potential for inconsistent rulings, can negatively impact foreign investors' confidence. If investors perceive Pakistan as a jurisdiction where arbitration awards are difficult to enforce, they may be less inclined to engage in business or investment in the country.

**Comparison with Regional Peers:** Compared to some of its regional peers, Pakistan may be seen as less arbitration-friendly, particularly if neighboring countries offer quicker and more predictable enforcement of foreign arbitral awards. This could place Pakistan at a competitive disadvantage in attracting foreign investment.

## **6. Need for Legislative Reform:**

**Updating the Legal Framework:** Critics argue that the Act could benefit from further legislative reform to address its shortcomings, such as by providing clearer guidelines on public policy, reducing procedural barriers, and introducing provisions for expedited enforcement of awards.

**Harmonization with International Standards:** There is also a call for greater harmonization with international arbitration standards and best practices to ensure that Pakistan remains an attractive destination for arbitration and foreign investment.

## **Conclusion**

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, significantly aids in the facilitation of international arbitration involving Pakistani entities or interests. By closely adhering to the New York Convention, Pakistan ensures that foreign arbitral awards are recognized and enforced efficiently, thereby enhancing its appeal as a favorable destination for international commercial activities.

Pakistani courts generally view the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, as a key tool for promoting arbitration as a reliable and efficient means of dispute resolution in line with international standards. The judiciary's approach has been to support the enforcement of foreign arbitral awards while carefully applying the limited grounds for refusal provided under the Act, particularly the public policy exception.

While the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, has made significant strides in promoting arbitration in Pakistan, it is not without its challenges. The criticisms focus primarily on the implementation of the law by the judiciary, the interpretation of key provisions like the public policy exception, and the procedural hurdles that can impede enforcement. Addressing these concerns through judicial training, legislative reform, and efforts to streamline the enforcement process could help strengthen Pakistan's position as an arbitration-friendly jurisdiction.