

Enforcement of Foreign Arbitral Award Under the New York Convention in Pakistan

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How to Cite this Article:

Latif, S. (2025). Enforcement of Foreign Arbitral Award Under the New York Convention in Pakistan. *Law Research Journal*, 3(2), 12–22.

Abstract

This article discusses the enforcement of foreign arbitration awards in Pakistan, focusing on the impact of the New York Convention and recent legal developments. Under Pakistani law, foreign arbitration awards are treated the same as local court decisions, ensuring that Pakistani courts enforce them just like their own rulings. The article highlights the benefits of international arbitration, such as its speed and lower cost compared to court cases, which led Pakistan to adopt the New York Convention in 1958 and replace the old Arbitration Act of 1937 with a new law in 2011. It examines how temporary foreign arbitration awards are recognized and enforced, drawing comparisons with international practices. The Convention covers disputes between parties from different countries and applies to awards not considered local in the enforcement country.

Keywords

New York convention, ADR, Enforcement, Grounds of refusal, Related case laws, Challenges, Importance

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1. Introduction

The ordinance that makes the New York Convention part of Pakistani law states that if a decision (award) is made in a country that has signed the New York Convention, it must be treated in Pakistan as if it were a decision made by a Pakistani court. This means Pakistani courts will enforce such awards in the same way they enforce their own judgments.¹ International commercial arbitration is a faster and cheaper way to resolve disputes compared to court cases. To support this, Pakistan signed the New York Convention of 1958 and passed the 2011 law to enforce it. This law replaced the older Arbitration Act of 1937.² In Pakistan, courts strongly support enforcing arbitration decisions under the 1958 New York Convention. This article reviews recent legal developments in Pakistan, including international examples and local laws, focusing on how interim foreign arbitration awards are recognized and enforced.³ The Convention applies to enforcing

1 ICC Pakistan, “ new York convention 1958” , available at <https://iccpakistan.com.pk/new-york-convention1958/#:~:text=According%20to%20the%20Ordinance%20incorporating.of%20a%20court%20in%20Pakistan>. (accessed on 15 December, 2024).

2 Zia Ullah Ranjha, “ Enforcing Foreign Arbitral Awards in Pakistan”, retrieved from https://sahsol.lums.edu.pk/sites/default/files/2022-09/enforcing_foreign_arbitral_awards_in_pakistan.pdf (accessed on 15 December, 2024).

3 Hassan Raza, ” enforcing interim awards in Pakistan finality or binding”, available at <https://arbitrationblog.kluwerarbitration.com/2024/02/29/enforcing-interim-awards-in-pakistan-finality-or-binding/> (accessed on 15 December, 2024).



arbitration awards made in one country but recognized in another. It covers disputes between individuals or organizations and includes awards that are not treated as local in the country where enforcement is requested.⁴

2. Background of the New York Convention

The New York Convention was created because the earlier Geneva treaties on arbitration (from 1923 and 1927) were seen as ineffective. The process began with a draft by the International Chamber of Commerce in 1953. The UN revised it in 1955, and after discussions at a UN conference in 1958, the New York Convention was finalized.⁵ The New York Convention of 1958 is an international treaty that ensures courts in member countries recognize and enforce arbitration decisions made in other countries. Pakistan joined this treaty on 14th July 2005, and it became effective there on 12th October 2005. This treaty is widely used in international trade to resolve disputes through arbitration, making it easier for businesses to enforce decisions globally.⁶

3. Objective of Enforcement of Foreign Arbitral Award

The New York Convention is an important agreement in international arbitration. It helps countries recognize and enforce arbitration decisions made in other countries (foreign arbitral awards). It also requires courts to send disputes to arbitration if there is an agreement between the parties to do so. This makes resolving international disputes faster and more reliable.⁷ When a foreign arbitral award is recognized and enforced in Pakistan, it is treated like a court's decision. It must be followed by the people involved, just like any court ruling.⁸ The New York Convention lets people or companies from different countries agree to settle disputes through arbitration instead of going to court. It also sets rules for recognizing and enforcing arbitration decisions made in one country, so they can be enforced in other countries that are part of the Convention.⁹ Article 5 of the New York Convention lists reasons why a foreign arbitral award might not be

4 THE QAZETTE OF PAKISTAN, EXTRA. • JULY 19, 2011,” CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS”, available at https://www.newyorkconvention.org/media/uploads/pdf/4/3/439_recognition-and-enforcement-arbitration-agreements-and-foreign-arbitral-awards-ordinance-2005-reao-ordinance-no-viii-of-2 (accessed on 15 December, 2024).

5 New York convention, “History 1923 – 1958”, available at <https://www.newyorkconvention.org/text/travaux-preparatoires/history-1923-1958> (accessed on 15 December, 2024).

6 New York Convention 1958,” UNICTRAL Convention on the Recognition and Enforcement of Foreign Arbitral Awards – New York Convention 1958”, available at <https://iccpakistan.com.pk/new-york-convention-1958/> (accessed on 15 December, 2024).

7 The New York convention,” objectives of enforcement of foreign arbitral award”, available at <https://www.newyorkconvention.org/#:~:text=The%20Convention%20on%20the%20Recognition,by%20a%20court%20to%20arbitration> (accessed on 15 December, 2024).

8 LUMS,” Enforcing foreign arbitral award in Pakistan”, available at https://www.google.com/search?q=understanding+enforcement+for+foreign+arbitral+awards&oq=understanding+enforcement+for&gs_lcr (accessed on 15 December, 2024).

9 51320,” Convention on the Recognition and Enforcement of Foreign Arbitral Awards”, available at <https://www.mpo.gov.cz/en/foreign-trade/international-organizations-and-trade/uncitral/international->

enforced, such as if there was no valid arbitration agreement, if the process was unfair, if the arbitrators exceeded their authority, or if the award goes against public policy or laws. It also applies if the award is not final or has been annulled in the country where it was made.¹⁰ Arbitration helps resolve international trade disputes quickly and fairly. The New York Convention ensures arbitration agreements and decisions are enforced globally, promoting trust and smooth trade.¹¹ Countries that support this process attract more business and boost their economies.¹² Pakistan has improved arbitration enforcement with support from the New York Convention, but delays remain an issue. Faster processes are key to attracting global business and boosting the economy.¹³ Courts now focus on justice rather than strict deadlines when allowing more time to challenge arbitral awards. If extending time serves justice and the award hasn't been enforced yet, courts can permit the challenge, prioritizing fairness over rigid rules.¹⁴

4. Recognition of Foreign Arbitral Award

A foreign arbitral award enforceable under this law is binding on the parties involved and can be used in legal cases in Pakistan as a defense, claim, or for other purposes.¹⁵ Most Central and Eastern European (CEE) countries follow two main international rules for recognizing and enforcing foreign arbitration awards. While filing requirements for such cases are somewhat similar, the specific court procedures differ across these countries. They also handle interim and partial awards differently.¹⁶ New technologies are influencing this

arbitration/convention-on-the-recognition-and-enforcement-of-foreign-arbitral-awards--279389/ (accessed on 15 December, 2024).

10 Norton Rose Fulbright, "Issues relating to Challenging and Enforcing Arbitration Awards", available at <https://www.nortonrosefulbright.com/en-pk/knowledge/publications/ee45f3c2/issues-relating-to-challenging-and-enforcing-arbitration-awards-grounds-to-r> (accessed on 15 December, 2024).

11 Saqib majeed, "Enhancing enforcement of international arbitration agreements and foreign arbitral awards in Pakistan: a positive shift", available at <https://www.ibanet.org/Enhancing-enforcement-of-international-arbitration-agreements-and-foreign-arbitral-awards-in-Pakistan> (accessed on 16 December, 2024).

12 *ibid*

13 International Bar Association, "Enhancing enforcement of international arbitration agreements and foreign arbitral awards in Pakistan", available at <https://www.ibanet.org/Enhancing-enforcement-of-international-arbitration-agreements-and-foreign-arbitral-awards-in-Pakistan> (accessed on 16 December, 2024).

14 Frankline chisom Embere, "Examining the Jurisprudence of Extension of Time to Challenge Arbitral Awards under the 1996 English Arbitration Act", available at <https://arbitrationblog.kluwerarbitration.com/2023/11/14/examining-the-jurisprudence-of-extension-of-time-to-challenge-arbitral-awards-under-the-19> (accessed on 16 December, 2024).

15 National Assembly of Pakistan, "fact of foreign arbitral award", available at https://www.google.com/search?q=Facts+of+Foreign+Arbitral+Award+&sca_esv=1c19dbe5365bb2ff&sxsrf=ADLYWIKGmrJ_fYp (accessed on 16 December, 2024).

16 Ileana M.smeureanu, "five facts about recognition and enforcement of foreign awards in central and eastern Europe", available at <https://arbitrationblog.kluwerarbitration.com/2014/06/26/five-facts-about-recognition-and-enforcement-of-foreign-awards-in-central-and-eastern-europe/> (accessed on 16 December, 2024).

area, and although the processes can be complex, arbitration is becoming more popular. Courts in the region are committed to supporting arbitration as a reliable way to resolve disputes in today's connected world.¹⁷ Each country that agrees to this convention must treat international arbitration awards as valid and enforceable. They must follow their local legal procedures and cannot make it harder, more expensive, or impose stricter rules to enforce these awards than they do for their own domestic arbitration awards.¹⁸ A court can refuse to enforce an arbitration award if the losing party proves issues like invalid agreements, lack of proper notice, inability to present their case, decisions beyond the arbitration's scope, or improper procedures. Enforcement can also be denied if the award isn't final, has been canceled, or if the matter can't be settled by arbitration or violates the country's public policy.¹⁹ Every country that agrees to this rule must recognize written agreements to settle disputes through arbitration. These agreements can be in contracts or exchanges like letters or telegrams. If a court case involves such an agreement, the court must send the dispute to arbitration unless the agreement is invalid or cannot be followed.²⁰

5. Grounds of Refusal

Arbitral award may also be refused if the competent authority of particular country, finds that the recognition or enforcement of the award would be contrary to the public policy of that country.²¹ Under Article V of the New York Convention, courts can refuse to enforce an arbitration award if the parties lacked capacity, the arbitration agreement was invalid, due process was violated, the decision exceeded the agreed issues, the tribunal was improperly formed, the process wasn't followed, or the award isn't final.²² Enforcement can also be refused if the issue isn't suitable for arbitration or violates public policy. These refusal grounds are limited, courts can't review the merits, the opposing party must prove their case strictly, and enforcement is generally favored.²³ Article V(1)(a) allows a party to oppose the recognition or enforcement of an arbitral

17 *ibid*

18 Article III," new york convention 1958", available at https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=619&opac_view=-1 (accessed on 16 December, 2024).

19 Article V," new york convention 1958", available at https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=730&opac_view=-1 (accessed on 16 December, 2024).

20 Article II," new york convention 1958", available at https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=618&opac_view=-1 (accessed on 16 December, 2024).

21 LUMS, "Enforcing foreign arbitral award in Pakistan", available at https://www.google.com/search?q=grounds+of+refusal+of+foriegn+arbitral+award&oq=grounds+of+refusal+of+foriegn+arbitral+award&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIJCAEQIRgK GKABMgkIAhAhGAoYoAEyBwgDECEYjwIyBwgEECEYjwLSAQkxNjxNGowajeoAgewAgE&sourceid=chrome&ie=UTF-8 (accessed on 16 December, 2024).

22 Sébastien Fries, Martin Molina, Annemarie Streuli, Denise Wohlwend," Grounds to Refuse Enforcement", available at <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/grounds-refuse-enforcement> (accessed on 16 December, 2024).

23 *ibid*

award if they can prove that one of the parties in the arbitration agreement was legally incapable or had some legal limitation under the applicable law.²⁴ Article V(1)(a) says that a party can challenge the recognition or enforcement of an arbitral award if they can prove that one of the parties in the arbitration agreement was legally unable to make the agreement, based on the laws that apply.²⁵ Current law says that if the police lose evidence that could help the defense, it doesn't violate due process unless they acted in bad faith. This rule came from the case *Arizona v. Youngblood*, which involved the wrongful conviction of an innocent person.²⁶ This article criticizes the *Youngblood* decision and argues for a better understanding of the right to access evidence. It points out that since *Youngblood*, advances in science, new laws, and disagreements in courts have weakened the reasoning behind the decision.²⁷ The scope of an arbitration agreement defines which types of disputes should be settled through arbitration. It can be broad, covering all issues related to the agreement, such as its breach, performance, or interpretation.²⁸ A court can cancel an arbitral award if the dispute cannot legally be resolved through arbitration or if the award goes against India's public policy.²⁹ After winning an arbitral award, the winning party may need to enforce it in the country where the losing party's assets are located. In Thailand, foreign arbitral awards cannot be appealed or set aside, so losing parties often try to block enforcement in Thai courts as a last resort.³⁰ One common tactic is claiming the

24 Jus Mundi, "invalidity of arbitration agreement", available at [https://www.google.com/search?q=Invalidity+of+arbitration+agreement+\(Article+V\(1\)\(a\)\)+Parties+to+arbitration+agreement+under+some+incapacity&oq=Invalidity+of](https://www.google.com/search?q=Invalidity+of+arbitration+agreement+(Article+V(1)(a))+Parties+to+arbitration+agreement+under+some+incapacity&oq=Invalidity+of) (accessed on 16 December, 2024).

25 Max Werkhoven, "Incapacity Under the New York Convention Article V(1)(a)", available at [https://jusmundi.com/en/document/publication/en-incapacity-under-the-new-york-convention-article-v-1-a#:~:text=Article%20V\(1\)\(a\)%20provides%20that%20the%20relevant%20party,according%20to%20the%20applicable%20law.](https://jusmundi.com/en/document/publication/en-incapacity-under-the-new-york-convention-article-v-1-a#:~:text=Article%20V(1)(a)%20provides%20that%20the%20relevant%20party,according%20to%20the%20applicable%20law.) (accessed on 16 December, 2024).

26 Norman C. Bay, "Old Blood, Bad Blood, and Youngblood: Due Process, Lost Evidence, and the Limits of Bad Faith", available at https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1118&context=law_lawreview (accessed on 16 December, 2024).

27 *ibid*

28 What is the scope of the arbitration agreement, "Award Exceeds the Scope of the Arbitration Agreement", available at https://www.google.com/search?q=The+Award+Exceeds+the+Scope+of+the+Arbitration+Agreement+&sc_a_esv=b91ec29083e2d2be&sxsrf=ADLYWIKIo4FWsshIb8S_2rrruym8EksgnQ%3A17 (accessed on 16 December, 2024).

29 What is the ground for setting aside the arbitral award?, "ground of refusal The award is not Binding or has been Set Aside", available at <https://www.google.com/search?q=ground+of+refusal+The+award+is+not+Binding+or+has+been+Set+As+ide&oq=ground> (accessed on 16 December, 2024).

30 Nathee Silacharoen, David Beckstead, Sakolrat Srangsomwong, Norrapat Werajong, "Public policy and its implications on the enforcement of arbitral awards in Thailand", available at <https://www.ibanet.org/public-policy-implications-enforcement-arbitral-awards-Thailand> (accessed on 16 December, 2024).

award violates public policy. This article analyzes how Thai courts have recently used public policy to refuse enforcing arbitral awards.³¹

6. Challenges in Implimentation

A domestic arbitration award can be challenged in court if the tribunal mishandled the proceedings, the court had already canceled the arbitration before the award was made, the arbitration had become invalid under Section 35 of the Arbitration Act, 1940, or if the award was obtained unfairly or is otherwise invalid.³² To challenge the award, a party must apply to the court within 30 days of being notified that the award has been filed. The court will only set aside the award if a valid reason is found.³³ The place to challenge an arbitral award is usually where the arbitration agreement was made, the arbitration took place, or where the award is to be enforced. If the arbitration happened in one country but the award is being enforced in another, the challenge should be made in the country where enforcement is sought.³⁴ For example, if the award is being enforced in Pakistan under the Recognition and Enforcement Act 2011, challenges to its enforcement must also be made in Pakistan, as that is where the award is to take effect.³⁵

7. Case Laws of Foreign Arbitral Award

Dallah Real Estate and Tourism Holding Company (Appellant) v The Ministry of Religious Affairs, Government of Pakistan (Respondent).³⁶ This case highlighted the importance of verifying party consent to arbitration agreements.³⁷ Hub Power company limited v. pakistan WAPDA, pakistan supreme court, 2016.³⁸ This case emphasized the binding character of arbitration agreements and the idea of minimal judicial interference.³⁹ Karkey karadeniz elektrik uretim AS v. pakistan, Lahore high court, 2017.⁴⁰ This case highlights the necessity for precise interpretation of exceptions by contesting the enforcement of a foreign

31 *ibid*

32 Ali Zahid Rahim, Sameer Khosa, Syed Shahab Qutub, "enforcing and challenging arbitral awards in Pakistan", available at <https://www.lexology.com/library/detail.aspx?g=c8edd568-a793-425c-8236-9a44114444f2> (accessed on 16 December, 2024).

33 *ibid*

34 Sohaib Mukhtar, Shafqat Mahmood Khan Mastoi, "The Challenge of Arbitral Awards in Pakistan", retrieved from https://www.researchgate.net/profile/Sohaib-Mukhtar/publication/319153583_The_Challenge_of_Arbitral_Awards_in_Pakistan/links/59955229458515c0ce697493/The-Challenge-of-Arbitral-Awards-in-Pakistan.pdf (accessed on 17 December, 2024).

35 *ibid*

36 Case ID UKSC/2009/0165. "Dallah Real Estate and Tourism Holding Company (Appellant) v The Ministry of Religious Affairs, Government of Pakistan (Respondent)", retrieved from <https://www.supremecourt.uk/cases/uksc-2009-0165> (accessed on 17 December, 2024).

37 *ibid*

38 Farooq sanawan, "HUBCO vs WAPDA Case, PLD 2000 SC 841", retrieved from <https://www.slideshare.net/slideshow/hubco-vs-wapda-case-pld-2000-sc-841/76269046> (accessed on 17 December, 2024).

39 *Ibid*

40 Karkey Karadeniz v. Pakistan, "Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan (ICSID Case No. ARB/13/1)", retrieved from <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/520/karkey-karadeniz-v-pakistan> (accessed on 17 December, 2024).

arbitral ruling on the grounds of public policy.⁴¹Rousch power v. pakistan, Sindh high court, 2018.⁴² this case illustrated the difficulties in striking a balance between duties under international arbitration and national interests.⁴³Pakistan's domestic arbitration laws have been well-established over the past 60 years, supported by the higher courts. After adopting the New York Convention in 2006, Pakistan improved its international arbitration laws, making the process clear and reliable for foreign investors.⁴⁴International arbitration is a flexible and private way to resolve disputes, especially in a globalized world. Parties can choose the arbitrators, language, venue, and laws, making it ideal for cross-border disputes.⁴⁵ Unlike public court cases, arbitration keeps sensitive business information confidential, protecting company reputation and credibility.⁴⁶The judgment is important for three reasons. First, it confirms that only the High Court can handle the recognition and enforcement of foreign arbitral awards in Pakistan. Second, it explains the "take or pay" clause, stating it is not a penalty clause, based on global legal principles.⁴⁷ Third, it defines what "public policy" means in Pakistan. This is the first ruling in the country to clarify these issues and supports the speedy enforcement of foreign arbitral awards, following international standards.⁴⁸

8. Comparative Analysis of Foreign Arbitral Award

This study looks at the challenges of enforcing foreign arbitration awards in Pakistan. It focuses on two key laws: the Arbitration Act, 1940, and the Foreign Awards (Recognition and Enforcement) Act, 1961.⁴⁹ Despite these laws, enforcing awards is still difficult due to issues like lack of awareness, few specialized arbitration courts, long legal procedures, and weak enforcement systems. The study reviews laws, literature, and key

41 *ibid*

42 Hon'ble Chief Justice Mr. Justice Muhammad Shafi Siddiqui," High Court of Sindh at Karachi, Bench at Sukkur and Circuit Courts at Hyderabad and Larkana Judgement/Order Wise List of cases (Judgments / Orders)", retrieved from <https://caselaw.shc.gov.pk/caselaw/public/rpt-jo-list/742/2/-1> (accessed on 17 December, 2024).

43 *ibid*

44 RIAA," A Study of the Arbitration Law Regime in Pakistan", available at <https://www.riabarkergillette.com/usa/wp-content/uploads/Insight-Article-A-Study-of-the-Arbitration-Law-in-Pakistan.pdf> (accessed on 17 December, 2024).

45 ASL LAW," Advantages of international arbitration", available at <https://aslgate.com/the-role-of-international-arbitration-in-resolving-cross-border-disputes/#:~:text=One%20of%20the%20> (accessed on 17 December, 2024).

46 *ibid*

47 Zia Ullah Ranjah, " Enforcing Foreign Arbitral Awards in Pakistan", retrieved from https://sahsol.lums.edu.pk/sites/default/files/2022-09/enforcing_foreign_arbitral_awards_in_pakistan.pdf (accessed on 17 December, 2024).

48 *Ibid*

49 ABDULLAH GHAFUOR

Rana Baleegh-Ur –Rehman, Rida Khawar, Sardar Omer, Hassan Khan, muhammad arsalan," Enforcement of Foreign Arbitral Awards: A Critical Study of Pakistan's Current Arbitration Regime", available at <https://journals.umt.edu.pk/index.php/lpr/article/view/3872> (accessed on 17 December,2024).

cases to identify these problems and suggests ways to improve the enforcement process.⁵⁰ Arbitration is a way to resolve disputes where a neutral third party, called an arbitrator, makes a binding decision after hearing both sides. The decision is called an "award." Different countries have different rules about whether an arbitral award is considered domestic or foreign.⁵¹ The New York Convention defines a foreign award as one made by an arbitrator outside the country where it's being enforced. This paper compares the rules for enforcing foreign awards in China and Nepal, finding that their laws differ on issues like what can be arbitrated and what violates public policy.⁵²

9. Conclusion

To conclude this article I can say that In Pakistan, the law that follows the New York Convention says that foreign arbitration awards (decisions made in other countries) must be treated the same as local court decisions. This means Pakistani courts will enforce these foreign awards just like their own rulings. International arbitration is faster and cheaper than going to court, which is why Pakistan signed the New York Convention in 1958 and passed a new law in 2011 to enforce it, replacing an older law from 1937. Pakistani courts strongly support enforcing foreign arbitration awards. This article looks at recent changes in Pakistan's law, with examples from other countries, and explains how temporary foreign arbitration awards are recognized and enforced. The Convention covers disputes between people or companies from different countries and applies to awards that are not considered local in the country where they are being enforced.

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⁵⁰ *ibid*

⁵¹ Jaymangal Prasad," Enforceability of Foreign Arbitral Awards: A Comparative Study of the Law and Practice in Nepal and China", available at https://www.researchgate.net/publication/345898421_Enforceability_of_Foreign_Arbitral_Awards_A_Comparative_Study_of_the_Law_and_Practice_in_Nepal_and_China (accessed on 17 December, 2024).

⁵² *ibid*

- Case ID UKSC/2009/0165." *Dallah Real Estate and Tourism Holding Company (Appellant) v The Ministry of Religious Affairs, Government of Pakistan (Respondent)*", retrieved from <https://www.supremecourt.uk/cases/uksc-2009-0165> (accessed on 17 December, 2024).
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