

Kluwer Arbitration Blog

An End to the Taisei Saga in Pakistan

Hassan Raza · Wednesday, June 26th, 2024

The recognition and enforcement of foreign arbitral awards in Pakistan has been a subject of significant legal scrutiny and development. The Supreme Court of Pakistan has recently issued a landmark judgment aimed at clarifying and rectifying the legal framework surrounding this issue, aligning it more closely with international standards.

Historical Background

Historically, the enforcement of foreign arbitral awards in Pakistan required filing an application before the respective provincial High Court under [Section 6 of the Recognition and Enforcement \(Foreign Arbitral Awards and Arbitration Agreements\) Act of 2011](#) (“2011 Act”). This straightforward legal process became complicated due to various judgments that muddled the legal landscape, entangling Pakistan’s arbitration practice in unnecessary controversies for over a decade.

The Taisei Corporation Case

In 2011, in an arbitration seated in Singapore and administered by the International Chamber of Commerce, Singapore (“ICC”), an arbitral tribunal issued an award (“ICC Award”) in favor of Taisei Corporation (“Taisei”) against A.M. Construction Company (“AMCC”). AMCC subsequently filed an application under Section 14 of the [Arbitration Act of 1940](#) (“1940 Act”), requesting the Civil Court in Lahore to direct Taisei to file the ICC Award in the Civil Court so that AMCC could challenge it by filing objections. Taisei contested this application, arguing that the Civil Court lacked jurisdiction and that the High Court had exclusive jurisdiction to adjudicate the validity of a foreign arbitral award under the 2011 Act.

The Civil Court rejected Taisei’s position, determining that the ICC Award was a domestic award and, therefore, subject to challenge before the Civil Court in Lahore. Taisei appealed this decision to the Lahore High Court, which upheld the Civil Court’s decision. In its [judgment](#), the Lahore High Court stated that, since the 1940 Act had not been repealed by the 2011 Act, the general powers conferred upon the ordinary civil courts under Section 14 of the 1940 Act remained available for challenging foreign awards. Notably, the Lahore High Court held that, because the underlying subcontract between the parties was governed by Pakistan law, the ICC Award was a

domestic award. Taisei then filed an appeal before the Supreme Court of Pakistan in 2012.

Simultaneously, Taisei sought recognition and enforcement of the ICC Award under Section 6 of the 2011 Act before the Sindh High Court. AMCC successfully challenged this application based on its achievements before the Lahore Courts, leading to the rejection of Taisei's application by the Sindh High Court. Taisei appealed to the Divisional Bench of the Sindh High Court, which revived Taisei's application, declaring the ICC Award a foreign award that could be challenged or enforced only under the 2011 Act. AMCC challenged this decision in 2016 before the Supreme Court of Pakistan.

Supreme Court's Consolidated Proceedings

The Supreme Court consolidated the proceedings from both provincial High Courts (*i.e.*, the Lahore High Court and the Sindh High Court) to address whether the ICC Award was a foreign award and whether the High Courts had exclusive jurisdiction over such matters. In February 2024, Mr. Justice Mansoor Ali Shah issued a [comprehensive judgment](#) that significantly clarified the legal position.

Pro-Enforcement Presumption

Justice Shah adopted the pro-enforcement presumption of the [New York Convention of 1958](#) ("New York Convention 1958"), which would serve to foster investor confidence in Pakistan's economy. This presumption emphasizes that foreign arbitral awards should generally be recognized and enforced unless specific grounds for refusal are met, aligning Pakistan's stance with international standards.

Determination of the ICC Award as a Foreign Award

Justice Shah also confirmed that the ICC Award was indeed a foreign award because, notwithstanding that the governing law of the underlying subcontract was Pakistan law, the seat of arbitration was in Singapore. The 2011 Act repealed the [Arbitration \(Protocol and Convention\) Act of 1937](#), thus adopting a territorial approach: the seat of arbitration would determine the status of an award (*i.e.*, whether it is a domestic or a foreign award) and other factors, such as the nationality of the parties and the governing law of the underlying contract, would be irrelevant in this determination. Notably, Justice Shah's decision overturned previous, well-known Supreme Court judgments, including in the case of *Hitachi v. Rupali* [1998] SCMR 1618.

Retrospective Applicability of the 2011 Act

One of the critical aspects of Justice Shah's judgment was the clarification of the retrospective applicability of the 2011 Act. By virtue of Section 1(4) of the 2011 Act, the law applies retrospectively to foreign awards made from and after July 14, 2005, the date when Pakistan

ratified the New York Convention 1958 through a Presidential ordinance. This clarification ensures that all foreign arbitral awards issued from that date onwards would be subject to the 2011 Act, thereby providing a clear legal framework for their recognition and enforcement.

Implications of the Judgment

The net effect of the Supreme Court's judgment is the nullification of the Lahore Courts' decisions, while upholding the decision of the Divisional Bench of the Sindh High Court. AMCC's attempt to obstruct the ICC Award on grounds other than Article V of the New York Convention of 1958 was rightfully dismissed by the Supreme Court. The remedies to challenge domestic arbitration agreements and awards under Sections 30 and 33 of the 1940 Act, through domestic court intervention, are precisely the issues that the New York Convention 1958 aimed to rectify in respect of foreign arbitral awards. Domestic parties must acknowledge without doubt that, as a result of Pakistan's adopting the New York Convention 1958 through the 2011 Act, there are only two ways to challenge a foreign arbitral award: first, by challenging the foreign award under the procedural law of the seat of arbitration (i.e., the law of the contracting state where the award was issued); and, secondly, through objections under Article V of the New York Convention 1958 when an award creditor seeks recognition and enforcement of the foreign award against the award debtor. Any other route, as seen in the case of AMCC, is likely to be legally incorrect and will ultimately fail, albeit at the expense of Pakistan's investor confidence and the pro-enforcement environment. The Supreme Court's judgment is a significant step toward improving Pakistan's arbitration landscape. It brings much-needed clarity and consistency to the process of recognizing and enforcing foreign arbitral awards, aligning Pakistan's practices with international standards.

Moreover, this judgment underscores the importance of distinguishing between domestic and foreign arbitral awards. The clear demarcation established by the 2011 Act and reinforced by the Supreme Court's ruling ensures that foreign awards are treated differently from domestic ones, thereby upholding the international nature of foreign arbitral awards and ensuring their proper recognition and enforcement in Pakistan.

Future Prospects

The Supreme Court's judgment sets a precedent for future cases involving the recognition and enforcement of foreign arbitral awards in Pakistan. It establishes a clear legal framework that lower courts must follow, reducing the likelihood of conflicting judgments and legal uncertainty. This development is likely to enhance the overall efficiency and effectiveness of the arbitration process in Pakistan.

Additionally, the judgment is expected to encourage more parties to choose Pakistan as a seat of arbitration or as a jurisdiction for enforcing arbitral awards. The clear endorsement of the New York Convention 1958's principles signals to the international community that Pakistan is committed to upholding international arbitration standards, thereby making it a more attractive destination for resolving cross-border commercial disputes.

Conclusion

The Supreme Court of Pakistan's recent judgment on the recognition and enforcement of foreign arbitral awards marks a pivotal moment in the country's legal history. By aligning Pakistan's arbitration practices with international standards and adopting the pro-enforcement presumption of the New York Convention 1958, the Supreme Court has taken a significant step towards fostering a more reliable and investor-friendly legal environment.

This judgment not only resolves longstanding legal ambiguities but also sets a clear path for the future of arbitration in Pakistan. It ensures that foreign arbitral awards are recognized and enforced efficiently, promoting international trade and investment. The Supreme Court's decision is a testament to Pakistan's commitment to upholding its international obligations and providing a robust legal framework for arbitration, which is essential for the country's economic growth and integration into the global economy.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

2024 Summits on Commercial Dispute Resolution in China

17 June – Madrid

20 June – Geneva

Register Now →



This entry was posted on Wednesday, June 26th, 2024 at 8:20 am and is filed under [Arbitration Awards, Enforcement, New York Convention, Supreme Court of Pakistan](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

