

Journal of Law Social Studies (JLSS)

Volume 6, Issue 1, pp 17-27

www.advancelrf.org

Arbitration Agreement as a Pillar of Recognition and Enforcement of Foreign Commercial Arbitral Awards: An Exploratory Study of Pakistan and the UK

Khurram Baig

PhD Scholar Gillani Law College, Bahauddin Zakariya University, Multan

<https://orcid.org/0009-0005-4262-4983>

Email: mkb5729@gmail.com

**Shahzada Aamir Mushtaq
(Corresponding Author)**

Assistant Professor, Department of Law, Times Institute Multan

<https://orcid.org/0000-0003-3158-3336>

Email: amirqureshi.adv@gmail.com

Waheed uz Zaman

Lecturer, College of Law, University of Sargodha

Email: waheed.zaman@uos.edu.pk

Abstract

The study examined features of international arbitration agreements including enforcement and related legal systems in Pakistan and the United Kingdom (UK). The study covered significant subjects such party autonomy, enforcement of arbitration agreements and the influence of court rulings on international arbitration. The study emphasized the significant function of arbitration agreements in settling disputes that span international borders, enhancing effectiveness and safeguarding party independence. Pakistan and the UK both have legal frameworks that support arbitration and the enforcement of arbitral rulings notwithstanding differences in how these are understood and carried out. Challenges such as jurisdictional difficulties, the legitimacy of arbitration agreements and balancing arbitration with judicial proceedings are still common. The study highlighted arbitration as an equitable, efficient and impartial method for settling disputes in international commercial agreements. The study also highlighted the need of clear and well-crafted arbitration agreements regarding enforcement of foreign commercial arbitral award that adhere to international norms and legal standards. By using such agreements, it guarantees that arbitral rulings may be upheld and reduces the likelihood of disputes stemming from ambiguities or inadequacies in the agreement's language. The study provides a comprehensive examination of arbitration laws, court rulings, and global agreements, highlighting the significance of arbitration as a preferred method for resolving international disputes regarding foreign commercial arbitral award. Arbitration improves legal certainty, promotes economic advancement, and increases investor trust between Pakistan and the UK.

Keywords: International arbitration agreements, foreign commercial arbitral award, Enforcement, Legal frameworks, Jurisdictional issues, Cross-border disputes.

Introduction

The primary prerequisite for the recognition and enforcement of foreign commercial arbitral awards (REFCAAs) is the legitimacy of the agreement. Litigation is a basic right of citizens for resolving disputes unless they choose arbitration instead. The party's intention is shown in an arbitration agreement that should withstand any interference by resolving disputes via default processes, such as litigation. REFCAAs may be rejected if the agreement is deemed flawed (Abbas, A. et al., 2022). The current convention provides some essentials requirements for the validity of an arbitral award.

Firstly the New York Convention (NYC) allows for both existing and future disputes to be resolved through arbitration. When the agreement relates to an existing dispute it is known as a submission settlement." alternatively, if the settlement is for the resolving future disputes, it is called as an arbitration clause (Sarwar, K. 2023).

Secondly Article II of the NYC stipulates that parties can adapt to settle the disputes related to a particular legal relationship through arbitration. The parties prefer an arbitration process instead of litigation which is absolutely convenient for the both parties (Cordero-Moss, G. 2024).

Thirdly there must be free and voluntary consent from all parties to an AA. It means each party willingly agrees to resolve their disputes through arbitration and is not coerced or forced into the AA (Born, G. (2021).

Fourthly Article II (2) presents a complete definition of what constitutes an agreement in writing." It includes an arbitration clause in an agreement or a stand-alone agreement, each of which may be signed through the parties. At the same time as Article II (1) calls for the settlement to be in writing, it does not now explicitly call for that the record endures the signatures of the parties. But, whilst examine together with Article II (2), it turns into evident that any file, even though not signed by the parties, can be taken into consideration as an arbitration agreement as much as it reflects the clear objectives of the parties to redress their disputes through arbitration. The vital factor is that the writing should indicate the parties' mutual consent and commitment towards arbitration (Phua, M., & Chan, M. 2020).

Lastly the absence of any legal obstacles prohibiting the parties from engaging into the AA is another critical component of a valid AA. The NYC addresses this matter in Article V (1) (a), which states that if one party can prove that the other was legally unable to enter into the AA then the recognition and execution of the arbitral rulings might be rejected. Any agreement is rendered null and void, ineffective, or incapable of being executed with the occurrence of any legal disability as stated in Article II (3) of NYC. Lack of power or competence to represent a party to implement the AA is another possible meaning of this term (Engholm Cardoso, M. C. 2020).

Legal Frameworks Regarding Arbitration Agreement (AA) in Pakistan

Arbitration agreements (AA) play a crucial role in facilitating the execution of arbitration agreement as outlined in Section 4 of the Recognition and enforcement (Arbitration Agreements and foreign Arbitral Awards) Act, 2011(REFA, 2011) in Pakistan. This section underscores the significance of AA as the foundation that supports the acknowledgment and execution of arbitral decisions. International commercial arbitration relies on AA to resolve disputes outside of traditional judicial settings. Section 4 of the REFA, 2011 emphasizes the legal legitimacy and binding nature of these agreements in enforcing foreign commercial arbitral awards (FCAAs) under Pakistan's law (Tahir, M. I. 2023). Section 4 of the REFA, 2011 requires the presence of an AA for the enforcement of FCAAs. This section requires the parties to have a written or correspondence-based AA that expresses their decision to resolve disputes via arbitration. Following international arbitration standards, this criterion

emphasizes that parties must agree to arbitration to settle their disputes (Qutub, S. S., & Aziz, R. 2020).

Legal Frameworks Regarding Arbitration Agreement (AA) in the UK

Section 6 of the Arbitration Act 1996 (Act 1996) in the UK states that an AA is a pledge to resolve current or future disputes, regardless of whether they are contractual, by arbitration. This paragraph underscores the broad scope of AA covering many conflicts and underlining the parties' preference to settle their disagreements via arbitration rather than conventional legal avenues. References to written arbitration provisions or papers including them in agreements are considered references to AA if the reference incorporates the clause into the agreement, as specified in Section 6 (Kleinheisterkamp, J., & Upadhyay, S. 2019)

Section 7 of the Act 1996 clarifies the idea of the separability of AA. This concept asserts that the AA remains legitimate and enforceable even if the main agreement is null, invalid, or ineffective. The arbitration provision is considered a distinct and autonomous contract from the primary agreement. This clause ensures that AA remains independent and effective, regardless of the legitimacy or legality of the underlying transaction (Jain, S.2020). Section 8 discusses whether the parties in an AA are absolved of responsibility if one of the parties dies. An AA remains enforceable under paragraph (1) even after a party's death, unless the parties have explicitly agreed otherwise. That party's personal representatives may enforce the agreement. This paragraph ensures the efficacy of AA in resolving disputes by allowing for the continuation of arbitration procedures if the parties' circumstances change. Paragraph (2) clarifies that this article does not apply to any common law or statutory provisions that terminate a party's substantive rights or duties upon their death (Chaku, I. 2022). Together, these rules provide a strong legal foundation for AA in the UK, highlighting their significance in promoting arbitration as a method for resolving conflicts. Section 6 offers clarity and flexibility, facilitating efficient and adaptable dispute resolution methods, allowing arbitration agreements to cover various situations. Furthermore, the concept of separability, as outlined in Section 7, ensures that AA may be enforced regardless of the validity of the main contract, thereby maintaining the autonomy and credibility of arbitration processes (Born, G. B. 2014).

Section 8 discussed the recognition of AA continuing after a party's death improves the reliability and consistency of arbitration as a method for resolving disputes. This clause guarantees that AA remain enforceable against the personal representatives of a dead party, enabling arbitration proceedings to proceed efficiently without being affected by changes in the parties' status. These rules are crucial in encouraging the UK to choose arbitration as the preferred way for resolving disagreements. The Act of 1996 promotes a conducive climate for arbitration by ensuring consistency, autonomy, and transparency in enforcing AA, which in turn boosts parties' confidence in engaging in arbitration. The British judicial system is more effective and efficient (Camilleri, S. 2023).

Comparative Analysis of the NYC in Pakistan and the UK

In Pakistan and the UK, the term "agreement in writing" in Article II is commonly understood to include several sorts of AA including arbitral clauses in contracts, separate arbitration agreements and agreements in written communications. This interpretation ensures that parties have the freedom to be adaptable when forming AA and that these agreements are recognized and safeguarded under the NYC. In Pakistan and the UK, courts uphold the kompetenz-kompetenz doctrine, allowing the arbitral tribunal to decide on matters within its jurisdiction, including the legality and existence of the AA. This concept enhances the autonomy of arbitration while restricting the authority of national courts to interfere in arbitration proceedings. The legal systems of Pakistan and the UK are greatly impacted by the interpretation and application of Article II of the NYC in relation to AA notwithstanding some differences in approach and methodology. Now this study examines how arbitration agreements are

read by courts in Pakistan and the UK in accordance with Article II of the NYC.

Pakistan and the UK both demonstrate commitment to promoting arbitration as a preferred method of resolving disputes by their interpretation and application of Article II of the NYC. The primary objective is to protect the autonomy of parties in choosing arbitration and to facilitate the resolution of conflicts via arbitration techniques, notwithstanding the presence of different tactics. Comparative Analysis of United Nations Commission on International Trade Law (UNCITRAL) in Pakistan and the UK Regarding the Arbitral Agreement

Articles 7, 8, and 9 of the UNCITRAL Model Law (UML) on International Commercial Arbitration uphold the parties' autonomy in selecting arbitration as a method of resolving disputes by outlining the scope of AA, enforcement procedures and their relationship with other legal processes. They help resolve conflicts quickly by establishing clear procedures for referring issues to arbitration, enabling arbitration to run alongside court processes, and giving courts interim remedies. Arbitration agreements are essential in international business arbitration since they provide parties a method of settling disputes without using conventional judicial systems. The UML on International Commercial Arbitration is extensively used worldwide (Sarwar, K. 2023), notably in Pakistan and the UK, providing a thorough structure for AA. This comparative research will examine the implementation and interpretation of UML Articles 7, 8, and 9 in Pakistan and the UK, and their impact on the legal framework concerning arbitration agreements.

Pakistan, as a signatory, has incorporated the principles of the UML into its national law, granting legal validity to arbitration agreements. Pakistan adheres to a broad interpretation of Article 7 of the UML which delineates arbitration agreements, highlighting the autonomy and freedom of the parties about the agreements. Pakistan's courts have validated arbitration agreements, deeming them legal even in the lack of a clear written documentation (Mehmood, Y. 2022). Pakistan utilizes Article 8 of the UML to enhance the efficiency of arbitration by dealing with the submission of issues to arbitration. Pakistan's courts often use the concept of kompetenz-kompetenz, which empowers the arbitral panel to choose its own jurisdiction and submit disputes to arbitration upon request (Arbitration, C. 2023). Article 9 of the UML allows parties to seek interim relief from courts before or during arbitral proceedings. Pakistan's courts have issued these provisional orders to safeguard parties' rights before arbitration proceedings begin, acknowledging their significance. Interim actions that adhere to arbitration agreements may sometimes lead to procedural complications.

On the other hand the UML has had an impact on UK arbitration law, specifically with AA. UK courts interpret Article 7 of the UML which deals with AA in a broad and flexible manner, highlighting the parties' independence in defining the extent and nature of arbitration. UK courts rigorously uphold arbitration agreements, recognizing party sovereignty and the principle of separability, which states that the legality of the AA is separate from the legitimacy of the main contract (Varesis, F. 2020). Article 8 of the UML is implemented in the UK to uphold the importance of arbitration by handling conflicts via arbitration. Unless the AA is considered unlawful, unenforceable or impractical, UK courts often send cases to arbitration when requested. This strategy demonstrates a dedication to promoting arbitration as the favored technique for settling conflicts and aligns with the pro-arbitration position taken by UK courts (Campbell, M. 2024). Article 9 of the UML allows parties to get interim relief from UK courts before or during arbitral proceedings. UK courts have authorized interim remedies to maintain parties' rights and guarantee the efficacy of arbitration. Temporary solutions may only be available under certain circumstances, such as when a formal lawsuit has been initiated in court (Bantekas, I., & Ullah, I. 2022).

The UML prioritizes the autonomy, flexibility, and effectiveness of arbitration in settling conflicts between parties. It is the foundation for AA in the UK and Pakistan. Nevertheless, there are significant

differences in how the UML is applied and understood throughout all nations. Enforcing arbitration agreements may be difficult, especially when their legitimacy is disputed, even though Pakistan's legal system for arbitration agreements typically follows the UML. In contrast, the UK has a robustly pro-arbitration position, where courts diligently uphold arbitration agreements and direct disputes to arbitration under the UML.

Comparative Analysis of Judicial Perspective Regarding Arbitral Agreement (AA) in Pakistan and the UK

Perspectives on the enforcement of international arbitral rulings and AA in Pakistan and the UK demonstrate a dedication to upholding arbitration as the primary means for resolving disputes (Vávra, Z., & Sokol, O. 2022). Pakistan's courts often uphold arbitration, showing preference towards AA and the REFCAs. Pakistan's courts acknowledge the conclusiveness and obligatory status of arbitral rulings and stress the need of honoring international arbitration agreements. British courts have a history of honoring FCAs and AA. UK courts support the execution of arbitral award by upholding party autonomy and the finality of such awards.

Landmark decisions in the UK and Pakistan have helped to elucidate judicial judgments regarding the enforcement of FCAs and arbitration agreements. Pakistan's courts have shown their dedication to upholding AA and FCAs. Pakistan's courts support party autonomy and uphold the finality of arbitral rulings, fostering a conducive atmosphere for international arbitration. UK courts have shown their support for upholding FCAs and AA in instances such as *Dallah Real Estate and Tourism Holding Co v. The Ministry of Religious Affairs, Government of Pakistan* (2010) and *Shashoua v. Sharma* (2009). The courts prioritize party autonomy and the conclusiveness of arbitral rulings to ensure the effectiveness of arbitration as a dispute settlement method in the UK.

The Pakistan's Supreme Court (SC) made a significant ruling on the implementation of international AA in the matter of *Messrs Eckhardt & Co, Marine GmbH v. Muhammad Hanif* (PLD 1993 Supreme Court 42). The issue is the Court's reluctance to end legal procedures that began in Pakistan, despite the contract stipulating arbitration in London. This ruling presents two important legal and practical concerns: party autonomy in international contracts and the execution of AA.

The major question before the SC was whether to uphold the AA or let the domestic judicial processes to continue. The Court denied a request to halt the Pakistan's legal proceedings citing the principle of convenience to the parties. The Court deemed it too burdensome to require the parties to travel to London for arbitration testimony, which contributed to the prolongation of the processes in Pakistan.

This ruling deviates from the fundamental tenets of contract law which aim to maintain party autonomy and respect AA. Due to its impartiality, expertise, and ability to enforce decisions under the NYC international arbitration is often considered an effective tool for addressing cross-border disputes. The Supreme Court's ruling undermines the regularity and effectiveness of international dispute resolution systems and the integrity of AA by refusing to stop the legal proceedings and disregarding the arbitration provision.

The judgment raises concerns about the consistency and predictability of Pakistan's court rulings on arbitration issues. Party autonomy, the ability for parties to choose how they will resolve conflicts in their contracts, is a crucial aspect of international business law. However, the Court's focus on convenience as a reason for declaring the AA illegal raises concerns about the legitimacy of such arrangements and discourages foreign entities from engaging in business with Pakistan's companies.

The Pakistan's SC made an important ruling on the implementation of an AA in the matter of *M/s Uzin*

Export & Import Enterprises for Foreign Trade v. M/s M Iftikhar & Company Limited in 1993 SCMR 866. In this instance, the Court declined to enforce an agreement mandating arbitration in Paris for resolving disputes, citing expense and difficulty as reasons. This case presents significant legal and practical issues such as party sovereignty access to justice, and the enforcement of AA.

The fundamental question in this situation was whether the arbitration clause specifying Paris as the site for resolving disputes should be upheld or whether the parties should instead initiate legal proceedings in Pakistan. The SC chose not to enforce the AA largely due to the inconvenience and cost it would impose on the parties concerned. The Court concluded that requiring the parties to pursue arbitration in Paris would lead to increased expenses and logistical difficulties, ultimately reducing the efficiency and accessibility of the procedure.

This ruling goes against the fundamental foundations of contract law such as upholding AA and maintaining party sovereignty. Arbitration, a widely used process for settling disputes, offers advantages including secrecy, flexibility and specialized knowledge. Parties involved in international arbitration have the opportunity to choose a neutral site and procedural norms that suit their specific requirements and preferences. The SC choice not to uphold the AA due to convenience and cost factors weakens the integrity of contractual duties and diminishes the reliability and efficiency of international arbitration processes. The verdict also prompts questions about the availability of justice and the neutrality of dispute resolution procedures. Arbitration is often considered a more practical and efficient alternative to litigation, especially in cross-border conflicts where parties may struggle with various legal systems. If the SC refuses to support the AA due to concerns about inconvenience and costs it may discourage parties from resolving their issues via arbitration.

The Pakistan's SC affirmed a High Court ruling that prohibited one of the parties involved in the Hub Power Company Limited v. Pakistan WAPDA case (PLD 2000 SC 841), which included corruption charges. The Court's ruling that cases involving criminal accusations are not appropriate for arbitration terminated the arbitration process. This ruling emphasizes that certain disputes, especially those related to criminal activity or claims of it, may not be suitable for arbitration. Arbitration is mostly used to settle civil disputes, many of which involve contracts. Dealing with circumstances involving accusations of criminal conduct is often deemed unsuitable. The SC upheld the order against international arbitration in this instance, reasserting the restrictions of arbitration in dealing with matters outside of commercial disputes.

The judgment also takes into account the wider legal and social environment related to accusations of corruption. Criminal accusations may have significant legal and ethical consequences, sometimes requiring a comprehensive investigation and decision-making process including the official court system. Mediating conflicts between parties over allegations of corruption might undermine the openness and accountability necessary to eradicate unethical behaviors.

The case of Metropolitan Steel Corporation Ltd. v. Macsteel International UK Ltd (PLD 2006 Karachi 664) is a notable development in Pakistan's laws concerning the enforcement of international AA under the NYC. The Sindh High Court's ruling in this case established a firm and unwavering stance on Pakistan's courts' duty to halt legal proceedings that violate such AA. The Pakistan's courts' judgment shows their commitment to upholding the norms of the NYC and respecting agreements related to international arbitration. Pakistan's courts have offered clarity and predictability to parties in international economic disputes by consistently adopting this position in future rulings. This strategy promotes adherence to contractual obligations to arbitration, enhancing legal transparency and creating a conducive atmosphere for international investment and commerce.

The case Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited, 2019 CLD

1082, decided by the Lahore High Court, is important as it sets forth the correct procedure for dealing with arbitral decisions made outside of Pakistan concerning contracts regulated by Pakistan's law. The Court's decision sets precise criteria for acknowledging and enforcing foreign arbitral verdicts and highlights the significance of upholding the norms of the NYC. Understanding the AA and its connection to other international treaties, especially the NYC is crucial for the study. The terms of an AA provide the rules for the arbitral procedure and often state that the parties favor arbitration over litigation for settling disputes. This AA subject to Pakistan's law, led to an arbitral award issued outside Pakistan. The Lahore High Court said that such a verdict would be classified as FCAAs under the NYC. This ruling aligns with the principle of party autonomy, giving parties the freedom to choose the jurisdiction and applicable legal system for resolving conflicts.

The Court highlighted the restricted reasons for disputing the legitimacy of international arbitral verdicts as outlined in Article V of the NYC. The reasons may include disputes about policy, absence of proper procedures, or party incompetence. The Court limits objections to those outlined in the Convention to uphold the conclusiveness and consistency of arbitral decisions. This helps prevent parties from re-litigating matters solely on their merits while pretending to oppose public policy.

The Court's ruling highlights the importance of preserving the integrity of the arbitral process by not allowing the public interest exemption to be used as a means to assess the merits of arbitral decisions. Courts' excessive interference might hinder arbitration's goal of providing a more efficient and direct method of resolving problems. The Lahore High Court supports the validity of arbitral rulings, restricts appeals to certain grounds and enhances trust in the international arbitration system. It also confirms that arbitration is conclusive. The Lahore High Court's ruling in *POSCO International Corporation v. Rikans International* (2023 CLD 189) highlights the importance of honoring arbitration agreements and the supportive attitude of Pakistan's courts in enforcing foreign arbitral decisions. This case underscores the importance of arbitration agreements in resolving disputes and the courts' willingness to uphold the parties' contractual responsibilities.

The main issue in this case was the use of FCAAs obtained by POSCO International Corporation during an ongoing legal fight before a local court in Pakistan. The local court obtained a temporary order preventing POSCO from proceeding with arbitration. The Court's opinion is that an AA restricts parties from bringing claims covered by it to any forum other than arbitration, reinforcing the concept of party autonomy and the legally enforceable aspect of AA. The Court's decision to sustain the offshore arbitral judgment clarified the dispute resolution venue and highlighted the importance of parties meeting their contractual obligations.

The Lahore High Court's ruling in this case highlights the importance of honoring AA and the supportive attitude of Pakistan's courts towards international arbitral verdicts. This case emphasizes the importance of AA in resolving disputes and the courts' willingness to uphold the parties' contractual responsibilities.

The main issue in this case was the use of FCAAs obtained by POSCO International Corporation during an ongoing legal fight before a local court in Pakistan. The local court obtained a temporary order preventing POSCO from proceeding with arbitration. POSCO engaged in arbitration and successfully reached a settlement. The respondent contended that implementing this global arbitral decision in Pakistan would be detrimental to the public's interests. The Lahore High Court rejected this claim, highlighting the need of upholding arbitration agreements and discouraging parties from violating their contractual obligations. The Court's decision demonstrates its dedication to maintaining the integrity of AA and supporting the legitimacy and enforcement of arbitral verdicts.

The Court's perspective is that an AA restricts parties from pursuing claims covered by it in any forum

other than arbitration, reinforcing the principles of party autonomy and the enforceability of arbitration agreements. The Court's decision to sustain the offshore arbitral judgment clarified the dispute resolution venue and stressed the importance of the parties meeting their contractual obligations.

The Court strengthens its support for arbitration by acknowledging Pakistan's courts' recognition of the public policy in Pakistan's laws that promotes the enforcement of AA. This strategy is in line with global standards and helps create a positive legal framework for arbitration in Pakistan, making the country more appealing for foreign investment and trade.

The UK SC made a significant ruling on enforcing international arbitral judgments against state corporations in the case of *Dallah Real Estate and Tourism Holding Co. v. The Ministry of Religious Affairs, Government of Pakistan* (2010) UKSC 46. The case delves into the complex legal concepts of sovereign immunity and consent to arbitration in relation to the formation and acceptance of arbitration agreements.

The study primarily examined the legality of the Pakistan's government's acceptance of the arbitration agreement. The UK SC meticulously examined the arbitration agreement between *Dallah Real Estate and Tourism Holding Co.* and the Government of Pakistan to establish the presence and extent of consent. The Court stressed the importance of parties' explicit permission in arbitration, stating that parties cannot be forced to arbitrate disputes without such consent.

The Court also considered the concept of sovereign immunity, which protects states from being sued in the courts of other states without their permission. The Court acknowledged sovereign immunity but also examined whether Pakistan had waived its immunity by agreeing to arbitration. The Court concluded that there was not enough evidence to prove Pakistan's agreement to arbitration or any sign that its sovereign immunity had been surrendered.

This case emphasizes the significance of maintaining the integrity of arbitration agreements and honoring the autonomy of contractual parties. All parties must willingly sign AA and provide their explicit assent. The case highlights the difficulties of enforcing international arbitral rulings against state institutions and emphasizes the need of addressing concerns of sovereign immunity. The Commercial Court of England and Wales in the case of *Cruz City Mauritius Holdings v. Unitech Limited* (2014) EWHC 3704 (Comm) examined the validity of the AA as a key element. The Court meticulously analyzed the text, breadth and meaning of the arbitration clause to determine whether the parties had willingly agreed to arbitration. The Court's ability to consider the case over enforcing the FCAAs relied significantly on the validity of the AA if found enforceable, the AA would have provided legal backing to the foreign arbitral ruling. If the agreement was deemed invalid or unenforceable, it might have provided a basis for challenging the enforcement of the decision. The Court's major emphasis would have been to determine whether the AA met the requirements of validity set by applicable laws and international agreements. This may have included considering factors such as adherence to formality, parties' commitment to resolving conflicts via arbitration, and the text of the agreement. The case highlights the importance of having a well-drafted and enforced arbitration provision in international commercial contracts. The legality of the arbitration agreement was essential for determining the court's jurisdiction, the validity of the arbitration process, and ultimately, the implementation of the foreign arbitral ruling.

In *Dardana Ltd. v. Yukos Oil Company* (2002) EWHC 2040 (Comm), the English Commercial Court assessed the validity of an arbitration agreement and the enforcement of a foreign arbitral decision. The case is significant due to its exploration of parties' capacity to form arbitration agreements and the boundaries of arbitration provisions, which are essential considerations in the enforcement of international arbitral verdicts.

The primary factor in deciding the legitimacy of the AA in this case was whether the parties had the legal authority to enter into such an arrangement. This involves examining factors such as the parties' legal capacity, contractual competence, and willingness to engage in arbitration. If the court finds that the parties did not have the required capacity to engage into the AA it may be considered invalid or unenforceable. This would significantly affect the implementation of the foreign arbitral decision.

The Court's examination of the arbitration rules' scope was crucial to determine the enforceability of the FCAAs. Analyzing the content of the arbitration agreements is necessary to assess the problems addressed and the extent of the parties' consent to arbitration. Ambiguity or uncertainty about the extent of the arbitration provisions might impact the Court's decision on enforcing the foreign arbitral verdict.

Conclusion

The study provided in the contexts of Pakistan and the UK includes several aspects of international arbitration agreements including enforcement and legal systems regarding the REFCAs. Some features are addressed, such as party autonomy, arbitration agreement enforcement, and the impact of court decisions on international arbitration regarding REFCAs. The study highlighted the important role that AA play in resolving disputes across international boundaries, promoting efficiency and preserving party autonomy. Both Pakistan and the UK have legislative structures that facilitate arbitration agreement regarding the REFCAs notwithstanding variances in interpretation and execution. Challenges include jurisdictional issues, the validity of AA and finding right equilibrium between arbitration as well as judicial procedures remain common. The study highlighted the benefits of arbitration as a fair, effective and unbiased mechanism for resolving conflicts in international business deals; however, arbitration poses many challenges. The study emphasized the importance of arbitration agreements that are well-drafted, explicit and compliant with international norms and legal standards in questions of REFCAs. Utilizing such agreements ensures that arbitral decisions may be enforced and minimizes the chances of problems arising due to uncertainties or imperfections in the agreement's wording. The study provides a thorough analysis of arbitration rules, court decisions and international agreements, emphasizing the importance of arbitration as a favored approach for settling international conflicts such as REFCAs. Arbitration enhances legal stability, fosters economic progress, and boosts investor confidence in Pakistan and the UK.

References

- Abbas, A., Khan, M. M. A., & Lohani, A. (2022). The Optimization of Judicial Involvement in Commercial Arbitration in Pakistan. *Pakistan Journal of Social Sciences*, 42(1), 129-135. <https://pjss.bzu.edu.pk/index.php/pjss/article/view/1058>
- Abbas, S., & Kasuri, M. R. (2020). Public policy defense to refuse enforcement of foreign arbitral award: a comparative study. <http://www.mc-caddogap.com/>
- Arbitration, C. (2023). Issues in International Commercial Arbitration. <https://www.igi-global.com/chapter/issues-in-international-commercial-arbitration/333075>
- Born, Gary. "International Arbitration and Forum Selection Agreements, Drafting and Enforcing." (2021): 1-336 <https://biblioteca.uazuay.edu.ec/buscar/item/76256>
- Born, G. B. (2014). The law governing international arbitration agreements: An international perspective. *Singapore Academy of Law Journal*, 26, 815-848. <https://search.informit.org/doi/abs/10.3316/informit.059219713074291>
- Camilleri, S. (2023). Sense and separability. *International & Comparative Law Quarterly*, 72(2), 509-525. <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/sense-and-separability/72B71C398F0E61D9C7A94892BB8DE84A>
- Chaku, I. (2022). Third-Party Funding in Arbitration: A Comparative Analysis between the UK and India. *Jus Corpus LJ*, 3, 205. <https://heinonline.org/HOL/LandingPage?>
- Cordero-Moss, G. (2024). International Commercial Contracts: Contract Terms, Applicable Law and

- Arbitration. Cambridge University Press. <https://books.google.com.pk/books>
- Cruz City Mauritius Holdings v. Unitech Limited (2014) EWHC 3704 (Comm) <https://hsfnotes.com/arbitration/tag/cruz-city-1-mauritius-holdings-v-unitech-limited/>
- Dallah Real Estate and Tourism Holding Co v. The Ministry of Religious Affairs, Government of Pakistan (2010) <https://www.supremecourt.uk/cases/uksc-2009-0165.html>
- Dallah Real Estate and Tourism Holding Co. v. The Ministry of Religious Affairs, Government of Pakistan (2010) UKSC 46. <https://www.supremecourt.uk/cases/uksc-2009-0165.html>
- Dardana Ltd. v. Yukos Oil Company (2002) EWHC 2040 (Comm) https://newyorkconvention1958.org/index.php?lvl=notice_display&id=455
- Engholm Cardoso, M. C. (2020). Impecunious parties in international commercial arbitration. <https://doi.org/10.1093/arbint/aiaa002>
- Gullifer, L. (2022). The UNCITRAL Model Law and Secured Transactions Law Reform. *Brook. J. Corp. Fin. & Com. L.*, 17, 97. <https://heinonline.org/HOL/LandingPage?>
- Hub Power Company Limited v. Pakistan WAPDA case (PLD 2000 Supreme Court 841), <https://caselaw.shc.gov.pk/caselaw/view-file/MTYwMjYyY2Ztcy1kYzgz>
- Jain, S. (2020). Arbitration in USA and UK: A Comparative Study. Available at SSRN 3901913. <https://dx.doi.org/10.2139/ssrn.3901913>
- Kleinheisterkamp, J., & Upadhyay, S. (2019). The UK Supreme Court and International Commercial Arbitration. *b-Arbitra| Belgian Review of Arbitration*, 2019(2). <https://kluwerlawonline.com/journalarticle>
- Leaua, C., Muller, I. A., & Cozac, S. (2020). Comparative View on the Role of Domestic Courts in Arbitration: The Romanian Law versus the UNCITRAL Model Law. *Persp. L. Pub. Admin.*, 9, 224. <https://heinonline.org/HOL/LandingPage?>
- Lew, J. D., Mistelis, L. A., Kröll, S. M., & Kröll, S. (2003). *Comparative international commercial arbitration*. Kluwer Law International BV. <https://books.google.com.pk/books>
- M/s Uzin Export & Import Enterprises for Foreign Trade v. M/s M Iftikhar & Company Limited in 1993 SCMR 866 <https://www.ibanet.org/Enhancing-enforcement-of-international-arbitration-agreements-and-foreign-arbitral-awards-in-Pakistan>
- Mehmood, Y. (2022). Alternative Dispute Resolutions in Islamic Law with special reference to Pakistani Legal System. *Journal of Law & Sociocultural Studies*, 2(01), 9-29. <https://ifrois.org/ojs3306/index.php/jlss/article/view/10>
- Messrs Eckhardt & Co, Marine GmbH v. Muhammad Hanif (PLD 1993 Supreme Court 42). <https://caselaw.shc.gov.pk/caselaw/view-file/Nzc3MDhjZm1zLWRjODM>
- Metropolitan Steel Corporation Ltd. v. Macsteel International UK Ltd (PLD 2006 Karachi 664) <https://www.newyorkconvention.org/11165/web/files/document/1/8/18470.pdf>
- Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited, 2019 CLD 1082 <https://jumundi.com/en/document/decision/en-sui-northern-gas-pipelines-limited-v-orient-power-company-private-limited-judgment-of-the-lahore-high-court-thursday-1st-august-2019>
- Phua, M., & Chan, M. (2020). The distinctive status of international arbitration agreements in English private international law?. *Arbitration International*, 36(3), 419-427. <https://doi.org/10.1093/arbint/aiaa026>
- POSCO International Corporation v. Rikans International (2023 CLD 189) https://www.linkedin.com/posts/fhnaqvi_daewoo-pakistan-v-posco-ica-no-70389-of-activity-7066221689654624256-N8Z2
- Qutub, S. S., & Aziz, R. (2020). From Eckhardt to Orient: Transformation of the Judicial Approach to International Arbitration in Pakistan. *PLR*, 11, 1. <https://heinonline.org/HOL/LandingPage>
- Reynaldi, M. R. (2022). *Executing Cross-Border Insolvency in Indonesia: A Comparative Study with the EU and the UNCITRAL Model Law* (Doctoral dissertation, Universitas Gadjah Mada). <https://etd.repository.ugm.ac.id/penelitian/detail/219475>
- Sarwar, K. (2023). Pitfalls in the domestic and international commercial arbitration in

Pakistan. *Pakistan Journal of International Affairs*, 6(2).
<https://pjia.com.pk/index.php/pjia/article/view/802>

Societe Generale De Surveillance SA v. Pakistan through Secretary, Ministry of Finance Revenue Division, Islamabad (2002 SCMR 1694). <https://www.ibanet.org/Enhancing-enforcement-of-international-arbitration-agreements-and-foreign-arbitral-awards-in-Pakistan#:>

Tahir, M. I. (2023). Arbitration System in Commercial Disputes in Pakistan and Enforcement of Foreign Awards. *Al-NASR*, 73-92. <https://doi.org/10.53762/alnasr.02.03.e06>

Zaheeruddin, M. (2023). Recognition and Enforcement of Annulled Arbitral Awards Under the New York Convention 1958. *International Journal of Professional Business Review: Int. J. Prof. Bus. Rev.*, 8(7), 75. <https://dialnet.unirioja.es/servlet/articulo?codigo=9060812>

Zaman, M., & Sarker, M. (2023). National Courts' Power to Set aside an International Arbitral Award: An Aberration of International Commercial Arbitration. *Issue 1 Indian JL & Legal Rsch.*, 5, 1. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/injllw10&div=274&id=&page=>