



# THE RECOGNITION AND ENFORCEMENT (ARBITRATION AGREEMENT AND FOREIGN ARBITRAL) ACT, 2011



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# RECOGNITION AND ENFORCEMENT (ARBITRATION AGREEMENTS AND FOREIGN ARBITRAL AWARDS) ACT, 2011

ACT NO. XVII of 2011

*An Act to provide for the recognition and enforcement of arbitration agreements and foreign arbitral awards*

WHEREAS, Pakistan is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958;

WHEREAS, it is expedient to provide for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the said Convention and for matters connected therewith;

It is hereby enacted as follows:-

**1. Short title, extent, application and commencement.**—(1) This Act may be called the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011

(2) It extends to the whole of Pakistan.

(3) It shall apply to arbitration agreements made before, on or after the date of commencement of this Act.

(4) It shall not apply to foreign arbitral awards made before the 14th day of July, 2005.

(5) It shall come into force at once.

**2. Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(a) "Article" means an Article of Convention;

(b) "Contracting State" means a State which is a Party to the Convention;

(c) "Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10th June, 1958, set forth in the Schedule to this Act;

(d) "Court" means a High Court and such other superior court in Pakistan as may be notified by the Federal Government in the official Gazette; and

(e) "foreign arbitral award" means a foreign arbitral award made in a Contracting State and such other State as may be notified by the Federal Government, in the official Gazette.

**3. Jurisdiction of Court.**—(1) Notwithstanding anything contained in any other law for the time being in force, the Court shall exercise exclusive jurisdiction to adjudicate and settle matters related to or arising from this Act.

(2) An application to stay legal proceedings pursuant to the provisions of Article II of the Convention may be filed in the Court, in which the legal proceedings are pending.

(3) In the exercise of its jurisdiction, the Court shall,-

(a) follow the procedure as nearly as may be provided for the Code of Civil Procedure, 1908 (Act V of 1908); and

(b) have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908)

**4. Enforcement of arbitration agreements.**—(1) A party to an arbitration agreement against whom legal proceedings have been brought in respect of a matter which is covered by the arbitration agreement may, upon notice to the other party to the proceedings, apply to the court in which the proceedings have been brought to stay the proceedings in so far as they concern that matter.

(2) On an application under sub-section (1), the court shall refer the parties to arbitration, unless it finds that the arbitration agreement is *null* and *void*, in operative or incapable of being performed.

**5. Furnishing of documents.**—(1) The party applying for recognition and enforcement of foreign arbitral award under this Act shall, at the time of the application, furnish documents to the Court in accordance with Article IV of the Convention.

**6. Enforcement of foreign arbitral award.**-(1) Unless the Court, pursuant to section 7, refuses the application seeking recognition and enforcement of a foreign arbitral award, the Court shall recognise and enforce the award in the same manner as a judgment or order of a court in Pakistan.

(2) A foreign arbitral award which is enforceable under this Act, shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Pakistan.

**7. Unenforceable foreign arbitral awards.**— The recognition and enforcement of a foreign arbitral award shall not be refused except in accordance with Article V of the Convention.

**8. Inconsistency.**—In the event of any inconsistency between this Act and the Convention, the Convention shall prevail to the extent of the inconsistency.

**9. Powers to make Rules.**- The Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

**10. Repeal and saving.**— (1) The Arbitration (Protocol and Convention) Act, 1937 (VI of 1937) (hereinafter in this section referred to as "the Act") is hereby repealed.

(2) Notwithstanding the repeal of the Act, it shall continue to have effect in relation to foreign arbitral awards made-

(a) before the date of commencement of this Act; and

(b) within the meaning of section 2 of the Act which are not foreign arbitral awards within the meaning of section 2 of this Act

## SCHEDULE

[See Section 2 (a)]

## CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Done at New York on 10 June, 1958

Entry into force: 7 June, 1959

### ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory or a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

### ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

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2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is *null* and *void*, inoperative or incapable of being performed.

### ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral award to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

### ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:—

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

### ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought. Proof that:-

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
  - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
  - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters
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