

First Pakistani Judgement on New York Convention

On 14/02/2006 Justice Khilji Arif Hussain of the High Court of Sindh at Karachi issued an anti-suit injunction and compelled parties to proceed to arbitration at the Singapore International Arbitration Centre under the New York Convention 1958.

This is the first instance of a decision that interprets the New York Convention on Foreign Arbitral Awards under Pakistani law. A copy of the judgment can be viewed by pressing [here](#).

The New York Convention has been implemented within Pakistani law through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance 2005 and, although Ordinances under Pakistani law are only valid for a period of four months, this Ordinance is integral for ensuring that arbitration agreements and arbitral awards are enforced in Pakistan for the time being.

The decision of Khilji J is quite significant since the law on the enforcement of foreign arbitration agreements, as governed by s 34 of the Arbitration Act 1940 has been in a state of disarray prior to the promulgation of the Ordinance with the Supreme Court decision in *Eckhardt and Co v Muhammad Hanif* P L D 1993 Supreme Court 42 stating that ‘no hard and fast rule can be laid down or line of demarcation can be drawn to say in what cases refusal can be made. Each case has different facts and grant or refusal of stay is dependent upon peculiar facts and circumstances of each case. The Court can make objective assessment and come to the conclusion whether stay of legal proceedings can be granted or refused.’ Using this dicta, the courts of Pakistan would thus give great weight to the inconvenience caused to the Pakistani party being compelled to proceed to arbitration and would refuse to enforce the agreement for considerations including the lack of foreign exchange; ease of adducing evidence; and ease of compelling witnesses.

Upon the coming into force of the Ordinance this discretion has been removed by section 2(4). Khilji J has in fact specifically held on page 14 of the order that “Sub section (2) of Section 4 of the Ordinance 2005 has taken away discretion of the Court whether or not to stay the proceeding in terms of the Arbitration Agreement, even on the on the ground of inconvenience etc. except where the arbitration agreement by itself is null and void, inoperative, or incapable of being performed.” Khilji J then went on to hold that the arbitration agreement itself was perfectly capable of being performed.

As such, from the judgment of Khilji J, it seems that arbitration agreements will thus be enforced in line with the provisions of the New York Convention.

It is judgments such as these that underscore even more the importance of ensuring that the implementing legislation for the New York Convention is not allowed to lapse into antiquity and that a ratifying Act of the National Assembly is soon brought into force. Pro-arbitration judgments such as these are important for improving Pakistan’s image in the international business community and thus attracting greater foreign investment into Pakistan.