

## Pakistan

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### 1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

For a foreign judgment to be recognised in Pakistan the same must fall within the parameters of section 13 of the Civil Procedure Code 1908 (CPC), which provides as follows:

‘A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except:

- a) where it has not been pronounced by a Court of competent jurisdiction;
- b) where it has not been given on the merits of the case;
- c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Pakistan in cases in which such law is applicable;
- d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- e) where it has been obtained by fraud;
- f) where it sustains a claim founded on a breach of any law in force in Pakistan.’

In terms of section 13 of the CPC, statutory recognition is given to foreign judgments. Further, all foreign judgments shall be held to be conclusive as to any matter thereby directly adjudicated upon unless the conditions (a) to (f) of section 13 are true.

Section 44A of the CPC provides that where a foreign judgment has been rendered by a court in any country or territory outside Pakistan which the Government of Pakistan has by notification declared to be a reciprocating territory, it may be enforced in Pakistan as if the judgment has been rendered by the relevant court in Pakistan.

The High Court of Justice in England is a court in a reciprocating territory for the purposes of section 44A and accordingly, a money judgment of the High Court of Justice in England would, subject to the exceptions contained in section 13 of the CPC, be enforceable as if the judgment were the judgment of a district court in Pakistan.

### 2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?

In the case of *Emirates Bank International Ltd v Messrs Osman Brothers* (reported as *MLD 1990*, p 1,779) it was held that upon obtaining a foreign judgment three avenues are available to a foreign judgment/decree holder:

1. obtaining execution of the foreign judgment under section 44A of CPC, if the country from which the decree has been obtained is a reciprocating territory;
2. filing a suit in Pakistan on the basis of the foreign judgment treating it as the cause of action, given the conditions in section 13 CPC are fulfilled; and
3. filing a suit in Pakistan on the original cause of action.

Any notice or other document required to be served for instituting proceedings against a state shall be transmitted through the Ministry of Foreign Affairs of Pakistan to the Ministry of Foreign Affairs of the state, and shall be deemed to have been effected when the notice or document is received at the latter.

### **Can courts in Pakistan enforce a final judgment awarding costs?**

In the case of *Inam ur Rehman and another v Habib Bank Ltd* (reported as *CLC 1985*, p 296) it was held that:

1. section 44A of the CPC only allows execution of foreign decrees under which a sum of money is payable but such sum of money cannot be in respect of 'taxes or charges of like nature';
2. costs fall within the ambit of the phrase 'taxes or other charges of a like nature';
3. a decree awarding costs would not be a money decree and cannot be executed under section 44A of the CPC.

In view of the above, the costs awarded under the judgment cannot be executed under section 44A of the CPC.

### **Whether a foreign judgment having been given in default by a foreign court can be enforced in Pakistan?**

In terms of section 13 of the CPC, only those foreign judgments can be enforced by Courts in Pakistan which have been given on merits as decided in *Abdul Ghani v Haji Saleh Mohammad* (reported as *PLD 1960 Karachi*, p 594) and reaffirmed and upheld in *Habib Bank Ltd. Through Assets Management (ARM) International Division versus Muhammad Naveed Soomar and others* (reported as *CLD 2009*, p 354).

In the abovementioned cases, the Court bifurcated *ex parte* cases into three categories as follows:

1. those in which a defence is put in but struck out and a judgment is given in default without any judicial consideration of the claimant's evidence;
2. where no defence has been filed and the judgment is given under the summary procedure without regard for the claimant's evidence; and
3. where no defence is pleaded but the claimant's evidence is considered in some manner or another.

	Resultantly, the court held that judgements in the first two categories are not judgments on merits. However the third category would constitute a judgment on merits, allowing for the same to be enforceable in Pakistan.
<b>3.</b>	<b>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</b>
	<p>Under the State Immunity Ordinance 1981, States are immune from the jurisdiction of the Court in Pakistan except in the following circumstances:</p> <ul style="list-style-type: none"> <li>• submission to jurisdiction;</li> <li>• commercial transactions and contracts to be performed in Pakistan;</li> <li>• contracts of employment;</li> <li>• ownership or use of property;</li> <li>• patents, trademarks etc;</li> <li>• membership of bodies corporate;</li> <li>• arbitrations;</li> <li>• ships used for commercial purposes;</li> <li>• value added tax, customs duties etc.</li> </ul> <p>The Ordinance further clarifies that it does not affect any immunity or privilege conferred by the Diplomatic and Consular Privileges Act, 1972. However, section 3 of the Diplomatic and Consular Privileges Act, 1972 provides that the Federal Government may withdraw the privileges and immunities so conferred from the mission of that state or from any of the consular posts of that state.</p> <p>The CPC does not have any specific provision dealing with suits against a foreign state, and accordingly foreign states being sued through their relevant missions may rely on the privileges and immunities conferred by law. That is, under the state Immunity Ordinance 1981 and the Diplomatic and Consular Privileges Act 1972.</p> <p>Under Section 86 of the CPC the Legislature has conferred/given immunity to foreign rulers in respect of suits only and not to foreign states.</p> <p><b>‘86A. Suits against diplomatic agents.</b> (1) No proceeding in any Court shall lie against a diplomatic agent except in a case relating to –</p> <ol style="list-style-type: none"> <li>(a) any private immoveable property situated in Pakistan held by him in his private capacity and not on behalf of the sending State for the purpose of the mission;</li> <li>(b) a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;</li> <li>(c) any professional or commercial activity exercised by the diplomatic agent in Pakistan outside his official functions.</li> </ol> <p>(2) No measures of execution shall be taken in respect of a diplomatic agent except in cases which come under clauses (a), (b) and (c) of subsection (1) and in which such measures can be taken without infringing the inviolability of his person or of his residence.</p>

	<p>(3) The initiation of any proceedings in a Court by a diplomatic agent shall preclude him from invoking immunity from jurisdiction under this section in respect of any counterclaim directly connected with the principal claim.</p> <p>(4) The immunity of a diplomatic agent under subsection (1) or subsection (2) may be waived by the sending State; and any such waiver shall be express.</p> <p>(5) Waiver of immunity in respect of any proceedings shall not be held to imply waiver of immunity in respect of any measure of execution for which a separate waiver shall be necessary.</p> <p>(6) In this section, "diplomatic agent" in relation to a State means the head of the mission in Pakistan of that State and includes a member of the staff of that mission having diplomatic rank.'</p>
<b>4.</b>	<b>What exceptions may apply where the claim results from improper actions of the defendant state, e.g., wars of aggression?</b>
	<p>Section 17(2) of the State Immunity Ordinance, 1981 explicitly states that it does not apply to:</p> <p>(a) <i>Proceedings relating to armed forces.</i> The State Immunity Ordinance, 1981 does not apply to proceedings relating to anything done by or in relation to the armed forces of a state while present in Pakistan. This exception means that the armed forces of a foreign state may not be immune from jurisdiction in certain legal proceedings arising from their actions while they are present in Pakistan. Therefore, in cases such as those of wars of aggression, the privileges under the state Immunity Ordinance, 1981 shall not be applicable.</p> <p>(b) <i>Criminal proceedings.</i> A foreign state cannot claim immunity to avoid criminal liability for its actions in Pakistan, and criminal charges can be brought against the state in Pakistani courts for offences committed in-country.</p>
<b>5.</b>	<b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b>
	<p>Article 4 of the Constitution of Pakistan 1973 guarantees the right of individuals to be dealt with in accordance with law. Articles 9, 10, 10-A, 12, 13, 14 and 25 also ensure various protections.</p> <p>More specifically Article 10(1) provides as follows:</p> <p style="padding-left: 40px;">‘(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.’</p> <p>Article 10-A provides as follows:</p> <p style="padding-left: 40px;">‘For the determination of civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.’</p> <p>The above are the due process standards applicable to all proceedings in Pakistan, including proceedings for enforcement of a judgment against a state.</p>

	<p>Section 14 of the State Immunity Ordinance, 1981 however provides an exception that relief may not be given against a state by way of an injunction or order for specific performance, or for recovery of land or other property, and the property of a state (not being property which is for commercial purposes) shall not be subject to any process of enforcement of a judgment or arbitration award, unless the same is with the consent of the state through the Head of the Mission.</p>
<b>5a.</b>	<p><b>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</b></p>
	<p>As mentioned above, any notice or other document required to be served for instituting proceedings against a state shall be transmitted through the Ministry of Foreign Affairs of Pakistan to the Ministry of Foreign Affairs of the State, and shall be deemed to have been effected when the notice or document is received at the latter.</p> <p>Section 13(2) of the State Immunity Ordinance 1981 provides that proceedings cannot be initiated until two months after the state receives the required notice or document.</p> <p>Furthermore, if the state appears in the proceedings, it cannot later object to any non-compliance with the notice requirements.</p> <p>Section 13(4) of the State Immunity Ordinance 1981 provides that no judgment in default of appearance may be issued against the state unless it is proven that the notice requirements were not met and the specified time under section 13(2) has elapsed.</p> <p>Moreover, if a judgment is given in default of appearance, a copy of it must be sent to the state’s Ministry of Foreign Affairs, and the State has two months to apply for the judgment’s reversal.</p> <p>Any alternative methods of service are possible if agreed by the State and the abovementioned provisions do not apply to proceedings involving counter-claims or actions in rem against the state.</p>
<b>5b.</b>	<p><b>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</b></p>
	<p>Under Order 5 Rule 25 of the CPC, where the defendant resides outside Pakistan and has no agent in Pakistan empowered to accept service, service may be addressed to the defendant at the place where they are residing and sent by post if there is postal communication between such place and the place where the court is situated.</p> <p>Order 5 Rule 26 of the CPC deals with service in foreign territories through a political agent or court. If the Federal Government has appointed a political agent or established a court with the authority to serve a summons issued by a court in a</p>

	<p>foreign territory where the defendant resides, or if the Provincial Government has declared through an official notification that service by a court in that foreign territory is valid, then the summons can be sent to the political agent or court through postal or other means to serve upon the defendant.</p> <p>If the political agent or court returns the summons with an endorsement signed by the political agent or the judge or officer of the court stating that the summons has been served on the defendant as directed, that endorsement shall be considered as evidence of service.</p>
<b>5c.</b>	<p><b>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</b></p>
	<p>In enforcement proceedings where the court is assessing whether the right to representation requirements have been met in the original proceedings against a state, the standard is mainly derived from the Constitution of Pakistan 1973 which provides for a fair and impartial hearing, and protection of fundamental rights during the legal process.</p> <p>As mentioned above, Article 4 of the Constitution of Pakistan 1973 guarantees the right of individuals to be dealt with in accordance with law. Articles 9, 10, 10-A, 12, 13, 14 and 25 also ensure various protections.</p> <p>Furthermore, Article 14 of the Constitution of Pakistan 1973 provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against a person, or of their rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.</p>
<b>5d.</b>	<p><b>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</b></p>
	<p>The state’s duty to provide free legal aid to an accused facing criminal charges is encapsulated in provincial rules such as Volume 3 of the High Court Rules and Orders (Lahore). Part C of Chapter 24 provides for guidelines for the appointment of legal counsel at state expense where the accused is unrepresented by a private counsel at trial.</p>
<b>6.</b>	<p><b>What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?</b></p>
	<p>Section 15 of the State Immunity Ordinance 1981 states as follows:</p> <p><b>‘States entitled to immunities and privileges</b></p> <p>(1) The immunities and privileges conferred by this Act apply to any foreign State; and references to State include references to –</p> <p>(a) the sovereign or other head of that State in his public capacity;</p> <p>(b) the government of that State; and</p>

(c) any department of that government

but not to any entity, hereinafter referred to as a 'separate entity', which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts of Pakistan if, and only if –

(a) the proceedings relate to anything done by it in the exercise of sovereign authority; and

(b) the circumstances are such that a State would have been so immune.'

Immunity therefore *does not necessarily* apply to assets of state-owned entities and therefore it is capable of being enforced.