

## **Enforcement of Foreign Arbitral Awards in Palestine**

Foreign arbitral awards as judicial acts differ from judicial rulings on the grounds that arbitral awards have no executive power by themselves and cannot be enforced once they are issued. Arbitrators have the authority to decide on the subject of the dispute, making it binding to the parties and have the ability of the *res judicata*. However, arbitrators cannot compel the parties to implement it, which necessitates resorting to the judiciary to allow it to be enforced through compelling procedures and give it an executive force.

In principle, the arbitral award should be voluntarily implemented, but in the event that one party refuses to implement it, it's restored to the procedures for the compulsory execution of the arbitral award.

The Palestinian legislator provides two enforcement systems for arbitral awards; one is for domestic awards, while the other is foreign arbitral awards. Although Article 2 of the Law on Arbitration No. 3 of 2000 (PLA) has addressed international arbitration as another form of arbitration, it does not lay further consideration regarding the enforcement stage. When enforcing arbitration awards, the Palestinian legislation only differentiates between whether the arbitral award is issued outside or inside the borders of Palestine.

Hence, enforcement of domestic arbitral awards in Palestine only requires ratification by the competent court according to article 8 of the Palestinian Execution Law of 2005 (PEL). On the other hand, foreign arbitral awards are enforced through requests submitted in the form of a lawsuit to the court of the first instance, according to article 36 of PEL.

There are general conditions that should be included in the arbitral award such as; the parties of arbitration, the subject of the dispute, evidence, claims, the arbitrator's decision and conclusion. In addition to the general terms such as the date, and place of issuance, the signature of the arbitration panel, and any matters related to fees, expenses, and remuneration, which are regulated under Article 39 of PLA. Adding to that, there are some specific conditions that should be met before enforcing a foreign arbitral award in Palestine. These conditions are stipulated under Articles 48–50 of the PLA, Articles 78–75 of the Executive Regulation on Arbitration (ERA), as well as Articles 36–38 of the PEL. This article will tackle them briefly.

**1. The requirement of reciprocity, not contradicting Palestinian laws, and not harming the supreme public national interest.**

Article 36 of PEL states that *“An order may be issued forth in regard of the judgements, decisions and orders issued forth in a foreign country to be executed in Palestine under the selfsame conditions prescribed in such country for the execution of the Palestinian judgements, decisions and orders therein, provided that they do not contradict the Palestinian Laws or cause damage to the supreme national interest”*.

The reciprocity doctrine has generally been defined as 'the relationship between two States when one State offers the subjects of the other certain privileges on the condition that its subjects enjoy similar privileges in the other State'. Consequently, foreign arbitration awards in Palestine are treated in the same manner as the arbitration award issued in Palestine is treated in that country.

**2. The Arbitral Award must be final and have the force of the “res judicata.”**

Article 37/2 of PEL states that *“The judgment, decision or order has possessed the force of the order that has been judged in conformity with the law of the court which has issued it forth”*.

The principle of Res Judicata means “a matter finally decided on its merits by a court having competent jurisdiction and not subject to litigation again between the same parties”. Hence, the arbitral award shall be final and have concluded all its litigation and appeal phases to be enforced.

**3. The arbitral award does not contradict a ruling or decision previously issued by Palestinian courts**

Article 37/3 of PEL states that *“the judgment, decision or order does not contradict a judgment, decision or order that had been issued in advance by a Palestinian court and that it does not include any contraventions of the public order or morals in Palestine”*.

Additionally, Article 49/4 of PLA states that: *“Any party convicted by a foreign arbitration decision may request from the competent court to stop implementation of the decision of arbitration based on any of the following reasons: – If any of the courts in Palestine had issued a verdict that contradicts with the decision in a case filed between the same parties regarding the same matter and facts of the conflict”*.

Hence, to enforce the arbitral award; it shall not be in contradiction with a previous Palestinian court decision or ruling.

#### **4. The Arbitral award does not violate public order in Palestine**

Article 48 of the PLA states that “*Taking into consideration the international agreements adhered by Palestine and the laws in effect in Palestine, the competent court may, even upon its consideration, refuse to implement a foreign arbitration decision in any of the two following cases: 1- if the decision violates public order in Palestine; 2- if the decision does not conform to the international treaties and agreements applicable in Palestine.*”

Thus, even if the arbitral award meets all previous conditions and it is agreed upon between the parties, the award cannot be enforced if it contradicts the public order In Palestine.

#### **5. Verifying the arbitrability of the dispute under Palestinian laws**

Article 76/E of ERA states that:” *to implement the foreign arbitration award in Palestine, it must be: Has dealt with an issue that may be legally referred to arbitration under the laws of Palestine and that its implementation is not contrary to public order in Palestine.*”

The arbitrability of the disputed subject matter shall be verified before commencing arbitration procedures or enforcing it in Palestine.

#### **6. verifying that Palestinian courts are not solely competent to adjudicate the dispute the arbitral award was issued forth**

Article 37/1 of PLE state that “*The order concerning execution may not take place except following the verification of the following: 1. That the courts of the State of Palestine are not solely competent of the adjudication of the dispute regarding which the judgment, decision or order has been issued forth, and that the foreign courts which issued it forth are competent thereof in conformity with the Rules of International Judicial Jurisdiction established in their Law.*”

Before commencing arbitration or in the event that the arbitration procedures are concluded, it shall be verified that Palestinian courts don’t have the sole jurisdiction over the dispute. In this case, the arbitral award will be deemed null and void.

In sum, foreign arbitral awards are enforceable in Palestine, albeit, the aforementioned conditions have to be cumulatively met for an arbitral awards to be enforced in Palestine.