

THE ARBITRATION (PROTOCOL AND CONVENTION) ACT.

[India Act VI, 1937.] (19th January, 1939.)

Preamble.

Whereas India¹ was a State signatory to the Protocol on Arbitration Clauses set forth in the First Schedule, and to the Convention on the execution of Foreign Arbitral Awards set forth in the Second Schedule, subject in each case to a reservation of the right to limit its obligations in respect thereof to contracts which are considered as commercial under the law in force in British India ;

And whereas it is expedient, for the purpose of giving effect to the said Protocol and of enabling the said Convention to become operative in [the Union of Burma]² to make certain further provisions respecting the law of arbitration;

It is hereby enacted as follows :—

Commence-
ment and
operation.

1. The provisions of this Act shall have effect only from such date³ as the President of the Union may, by notification, appoint in this behalf, and the President of the Union may appoint different dates for the coming into effect of different provisions of this Act.

Interpreta-
tion.

2. In this Act “foreign award” means an award on differences relating to matters considered as commercial under the law in force in [the Union of Burma]² made after the 28th day of July, 1924,—

(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the First Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the President of the Union, being satisfied that reciprocal provisions have been made, may, by notification⁴ in the Gazette, declare to be parties to the Convention set forth in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(c) in one of such territories as the President of the Union, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Act an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

¹ Burma, being at the time a part of India, is party to this pre-separation Protocol.

² Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

³ Sections 2 and 4 to 10 have been declared to be in force from the 19th January, 1939; see *Burma Gazette*, 1938, Part I. page 1089.

⁴ For such a notification, see *Burma Gazette*, 1938, Part I, page 1089.

3. Notwithstanding anything contained in the Arbitration Act or in the Code of Civil Procedure, if any party to a submission made in pursuance of an agreement to which the Protocol set forth in the First Schedule applies and which relates to matters considered as commercial under the law in force in [the Union of Burma],¹ or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

Stay of proceedings in respect of matters to be referred to arbitration.

4. (1) A foreign award shall, subject to the provisions of this Act, be enforceable in [the Union of Burma]¹ as if it were an award made on a matter referred to arbitration in [the Union of Burma].¹

Effect of foreign awards.

(2) Any foreign award which would be 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 [the Union of Burma],¹ and any references in this Act to enforcing a foreign award shall be construed as including references to relying on an award.

5. (1) Any person interested in a foreign award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

Filing of foreign award in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

6. (1) Where the Court is satisfied that the foreign award is enforceable under this Act, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

Enforcement of foreign award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

7. (1) In order that a foreign award may be enforceable under this Act it must have—

Conditions for enforcement of foreign awards.

(a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed,

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

- (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties,
- (c) been made in conformity with the law governing the arbitration procedure,
- (d) become final in the country in which it was made,
- (e) been in respect of a matter which may lawfully be referred to arbitration under the law of [the Union of Burma],¹

and the enforcement thereof must not be contrary to the public policy or the law of [the Union of Burma].¹

(2) A foreign award shall not be enforceable under this Act if the Court dealing with the case is satisfied that—

- (a) the award has been annulled in the country in which it was made, or
- (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented, or
- (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration :

Provided that if the award does not deal with all questions referred the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in clauses (a), (b) and (c) of sub-section (1), or the existence of the conditions specified in clauses (b) and (c) of sub-section (2), entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence.

8. (1) The party seeking to enforce a foreign award must produce—

- (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made ;
- (b) evidence proving that the award has become final ; and
- (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in clauses (a), (b) and (c) of sub-section (1) of section 7 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

other manner as may be sufficient according to the law in force in [the Union of Burma].¹

9. Nothing in this Act shall—

- (a) prejudice any rights which any person would have had of enforcing in [the Union of Burma]¹ any award or of availing himself in [the Union of Burma]¹ of any award if this Act had not been passed, or
- (b) apply to any award made on an arbitration agreement governed by the law of [the Union of Burma].¹

Saving.

10. The High Court may make rules ² consistent with this Act as to—

- (a) the filing of foreign awards and all proceedings consequent thereon or incidental thereto ;
- (b) the evidence which must be furnished by a party seeking to enforce a foreign award under this Act ; and
- (c) generally, all proceedings in Court under this Act.

Rule-making powers of the High Court.

THE FIRST SCHEDULE.

PROTOCOL ON ARBITRATION CLAUSES.

The undersigned, being duly authorized, declare that they accept, on behalf of the countries which they represent, the following provisions:

1. Each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

² For such rules, see *Burma Gazette*, 1939, Part IV, page 44.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE SECOND SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

Article 1.— In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called

“a submission to arbitration”) covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, shall be recognized as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary:

- (a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon ;
- (c) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure ;
- (d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending ;
- (e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

- (a) That the award has been annulled in the country in which it was made ;
- (b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented ;
- (c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such

recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3. If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (*a*) and (*c*), and Article 2 (*b*) and (*c*), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular □

- (1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) Documentary or other evidence to prove that the award has become final in the sense defined in Article 1 (*1*), in the country in which it was made ;
- (3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the Signatories.

Arbitration (Protocol and Convention). 373

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

Article 10.—The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.